

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

WRIT PETITION NO.7417 OF 2020

**MAWALA BAHUDESHIYA SHIKSHAN SEVABHAVI
SANSTHA BHOKARDAN**

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for the Petitioner : Shri Chavan Sudhir K.

AGP for Respondents 1 to 3 : Shri S.B. Yawalkar

Advocate for Respondent 4 : Shri S.S. Tope

Advocate for Respondent 5 : Shri P.R. Katneshwarkar h/f Shri
P.M. Nagargoje

Advocate for Respondent 6 : Shri N.T. Tribhuwan and Shri K.B.
Deshpande

...

AND

WRIT PETITION NO.6729 OF 2019

WITH

CIVIL APPLICATION NO.8030 OF 2020

IN WP/6729/2019

WITH

CIVIL APPLICATION NO.6516 OF 2020

IN WP/6729/2019

GRAMIN SHIKSHAN PRASARAK MANDAL

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Shri A.N. Nagargoje, Advocate for the petitioner.

Shri S.B. Yawalkar, AGP for respondent Nos.1 to 3/ State.

Shri S.G. Chapalgaonkar, Advocate for respondent No.4.

...

AND

WRIT PETITION NO.6540 OF 2019

MAWALA BAHUDDDEESHIYA SHIKSHAN SEVABHAVI
SANSTHA
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for the Petitioner : Shri Chavan Sudhir K.
AGP for Respondent 1 : Shri S.B. Yawalkar
Advocate for Respondent 2 : Shri A.P. Nikam
Advocate for Respondent 3 : Shri P.R. Katneshwarkar h/f Shri
P.M. Nagargoje
...

CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.

DATE :- 29th November, 2021

Per Court :-

1. By Writ Petition No.7417/2020, the petitioner (Mawala Bahuuddeshiya Shikshan Sevabhavi Sanstha) has put forth prayer clauses A to C as under :-

- “A) *For a writ of certiorari, order or direction in the nature of certiorari, calling for the record and proceeding of the order dated 21.09.2020 (Exhibit O), issued by respondent No.1 thereby granting final permission in favour of the respondent No.5 to open the Senior College in the faculty of Arts, Commerce and Science at village Nachanwel, Tq.Kannad, District Aurangabad and after examining the legality, validity and propriety thereof, the order referred above may kindly be quashed and set aside.*
- B) *For a writ of mandamus, order or direction in the nature of mandamus, directing the*

respondent No.1 to grant final permission in favour of the petitioner pursuance to the proposal (Exhibit C colly) for opening of the Senior College in the faculty of Arts, Commerce and Science at village Nachanwel, Tq.Kannad, District Aurangabad.

C) That, the respondent No.6 may kindly be directed to provide the details of F.D. bearing F.D. No.0169703, dated 28.09.2018 and F.D. bearing F.D. No.0169762, dated 10.12.2018 or 10.09.2018 including the details of loan if any taken against the said F.D.”

2. We have spent almost more than two and half hours in considering the contentions of the learned counsel for the respective sides and we have painstakingly gone through the entire petition paper book running into almost 545 pages. We have perused the earlier orders passed by this Court wherein, the University was directed to forward the proposal of respondent No.5/ Prerna Bahuuddeshiya Shikshan Sanstha, Tajanapur, Tq.Khultabad, District Aurangabad represented by it's Secretary, namely, Mr.Ganesh Abarao Kale (hereinafter referred to as “Respondent No.5” or “Prerna Trust”).

3. Respondent No.5/ Prerna Trust had suffered the first rejection of it's proposal for starting an Arts, Science and Commerce College at Nachanwel, Taluka Kannad, District Aurangabad for the academic year 2019-2020. The University at

Aurangabad, Respondent No.4/ Dr.Babasaheb Ambedkar Marathwada University had forwarded the proposal of the said Prerna Trust with negative remark/ deficiencies indicating that it does not have any land, there is a rent agreement for utilizing a tin shed admeasuring 21800 sq. feet, it does not have a map for construction of a college building and the water connection is in the name of a different person. The electricity bill indicates that the electricity connection stands in the name of a different person. Mere quotation is attached. This reference of the proposal to the Government met with a rejection.

4. The said Prerna Trust had approached this Court in Writ Petition No.14223/2018 with Writ Petition No.14226/2018. This Court, by order dated 16.01.2019, opined that respondent No.4/University ought to forward the proposals with either negative or positive recommendations. On or about 14.12.2018, the University again forwarded the proposal to the State Government, which was after the cut off date 30.11.2018. This Court blamed the University for the anomalous situation and observed that the proposals of the said petitioners in Writ Petition No.14223/2018 and other connected petitions, were not found deficient in any respect, except that the University considered

that it would be a case of unhealthy competition. Subsequently, the University found these proposals in order and therefore, the delay was caused at the behest of the University. Finally, this Court directed the University to again forward the proposals returned by the Government, which would consider the said proposals in respect of the Institutions/ petitioners in the said writ petitions, who are desirous of starting new colleges and such decision should be taken before the cut off date.

5. The University then issued the letter dated 17.01.2019 forwarding the proposal of the present petitioner as well as respondent No.5/ Prerna Trust with positive/ negative recommendations. The State Government issued the letter of intent dated 31.01.2019 in favour of several Institutions including the Prerna Trust, for starting the two new colleges at Nachanwel and at Chikalthan, both in Taluka Kannad, District Aurangabad. One, Gramin Shikshan Prasarak Mandal approached this Court in Writ Petition No.6729/2019. By an order dated 12.06.2019, this Court directed that the State Government should take further steps with regard to grant/ refusal of permission in accordance with law and policy. If the State Government grants permission to the beneficiaries of the

Letter of Intent, the same would not take effect until further orders by this Court.

6. By communication dated 12.07.2019, the Desk Officer of the Higher and Technical Education Department, Mantralaya, Mumbai informed the University that certain proposals have been rejected on account of deficiencies and the University should intimate the said institutions as regards the said decision. Respondent No.5/ Prerna Trust was also refused permission. Subsequent thereto, the Deputy Registrar, Education Department of the University directed respondent No.5/ Prerna Trust and another institution to rectify the deficiencies. By communication dated 30.12.2019, respondent No.5/ Prerna Trust informed the Deputy Registrar of the University and by an earlier letter dated 16.12.2019 informed the Vice Chancellor that the deficiencies have been removed and any further deficiencies would be promptly removed.

7. On 26.10.2021, this matter was heard for quite sometime and since we desired that the University should comply with the procedure under Section 108 of the Maharashtra Public Universities Act, 2016, we had passed the following order:-

- “1. On 12.06.2019, in the first petition, this Court (Coram : S. V. Gangapurwala and Mangesh S. Patil, JJ.) had passed the following order :
"Mr. A.N. Nagargoje the learned advocate for the petitioner submits that the proposal of respondent no.5 could not have been considered for Nachanvel as the respondent no.5 had not submitted the Fixed Deposit Receipt required prior to 30.09.2018 the same is mandatory. The Fixed Deposit Receipt which was submitted for seeking permission at Chikalthana was used in the present proposal for Nachanvel also the same was illegal.
 2. Mr. P.M. Nagargoje the learned advocate for respondent no.5 contends otherwise.
 3. Certainly, it is for the State to consider all the aspects and it is only if the proposal complies with all requirements as laid down under Section 107 to 109 of the Maharashtra Public Universities Act the Government can grant permission.
 4. It is submitted that letter of intent has been issued to respondent no.5 subsequently the inspection has been made after the issuance of letter of intent.
 5. The petitioner has assailed the same and this Court on 25.04.2019 has directed the parties to maintain status quo as on the said date.
 6. It is submitted that as the order of status quo was in operation no further steps are taken. The last date for the State Government to grant permission for the academic year 2019-2020 is 15.06.2019.
 7. Under the present order, we clarify that the respondent-authority and the State Government may take further steps with regard to grant/refusal of permission in accordance with law and policy. However, in case the State Government grants permission to the respondent-institution the same shall not take effect until further orders of this Court. Place the matter on 25.06.2019. Authenticate copy to the parties."
8. We further directed as under :-
- “2. No orders have been passed in the second petition.
 3. Pursuant to the above reproduced order, the Higher

and Technical Education Department, State of Maharashtra has granted final permission to respondent No.5 to start the Arts, Science and Commerce Senior College Courses at Nachanvel, vide its order dated 21.09.2020.

4. *Section 108 of the Universities Act which pertains to grant of affiliation to a College, reads as under :*

"108. Conditions of affiliation and recognition .-

(1) The management applying for affiliation or recognition, and the management whose college or institution has been granted affiliation or recognition, shall give the following undertaking and shall comply with the following conditions,-

(a) that the provisions of the Act and Statutes, Ordinances and Regulations made thereunder and the standing orders and directions of the university and State Government shall be complied with;

(b) that there shall be a separate College Development Committee provided for an affiliated college as provided by section 97 of the Act;

(c) that the number of students admitted for courses of study shall not exceed the limits prescribed by the university and the State Government, from time to time;

(d) that there shall be suitable and adequate physical facilities such as buildings, laboratories, libraries, books, equipment required for teaching and research, hostels, gymnasium, etc. as may be prescribed;

(e) that the financial resources of the college or institution shall be such as to make due provision for its continued maintenance and working;

(f) that the strength and qualifications of teachers and non-teaching employees of the affiliated colleges and recognized institutions and the emoluments and the terms and conditions of service of the staff of affiliated colleges and recognized institutions shall be such as may be specified by the university and the State Government and which shall be sufficient to make due provision for courses of study, teaching or training or research, efficiently;

(g) that the services of all teachers and non-teaching employees and the facilities of the college

to be affiliated shall be made available for conducting examinations and evaluation and for promoting other activities of the university;

(h) that the directions and orders issued by the Chancellor, Vice-Chancellor and other officers of the university in exercise of the powers conferred on them under the provisions of this Act, Statutes, Ordinances and Regulations shall be mandatorily complied with;

(i) that there shall be no change or transfer of the management or shifting of location of college or institution, without prior permission of the university;

(j) that the college or institution shall not be closed without prior permission of the university;

(k) that in the event of disaffiliation or de-recognition or closure of the college or institution under section 121, the management shall abide by and execute the decision of Academic Council regarding the damages or compensation to be recovered from management.

(2) No college or institution of higher learning which is part of another university shall be considered for affiliation or recognition, as the case may be, unless a "no objection certificate" is given by the parent university."

*5. The predicament before this Court at this stage is as to whether we should grant permission to respondent No.5 to admit students. Admittedly, there is no Arts, Science and Commerce Senior College at Nachanvel operated by any of the petitioners before us. The difficulty in permitting respondent No.5 to admit students subject to the result of these petitions, would be putting the students to risk for no fault on their part. So also, Section 110 of the Universities Act reads as under :
"110. Procedure for affiliation.- (1) On receipt of the permission from the State Government, the Academic Council of the university shall consider grant of first time affiliation to the new college or institution of higher learning or to the new courses of study, subjects, faculties, additional divisions, or satellite centers as the case may be :*

- (2) *The Academic Council shall decide,-*
- (a) *whether affiliation should be granted or rejected;*
 - (b) *whether affiliation should be granted in whole or part;*
 - (c) *subjects, courses of study , the number of students to be admitted;*
 - (d) *conditions, if any, which may be stipulated while granting or for granting the affiliation to be complied within reasonable time:*

Provided that, in case of failure to comply with such conditions within such period, the affiliation granted shall be deemed to have been cancelled and no communication in this regard by the university to the management concerned shall be necessary.

- (3) *The Pro-Vice-Chancellor shall communicate the decision of Academic Council to the management with a copy to the Director of Higher Education, within one month from the date of communication of sanction by the State Government in respect of opening the new college or institution of higher learning or starting a new course of study, subjects, faculties or additional divisions, or satellite centers and if the application for affiliation is granted, alongwith an intimation regarding, -*

- (a) *the courses of study, subjects, faculties or additional divisions for which affiliation is granted;*
 - (b) *the number of students to be admitted;*
 - (c) *the conditions, if any, subject to the fulfillment of which the affiliation is granted and time stipulated for compliance of such conditions.*
- (4) *Where the college or institution is eligible and due for accreditation or re-accreditation, as the case may be, and such college fails to comply with the requirements of accreditation or re-accreditation, then no affiliation shall be granted by the university to such college or institution :*

Provided that, nothing in this sub-section shall apply in respect of the affiliation for natural growth of the faculty, additional division, course of study, subject or satellite centre.

- (5) *No student shall be admitted by the college*

or institution unless the university has granted the affiliation to the college or institution of higher learning or to a new course of study, subject, faculty or additional division."

6. *As such, we permit the University to comply with Section 108 procedure, save and except 108(c), until 15.11.2021. Insofar as, Section 108(c) read with Section 110 is concerned, we would consider the said provisions while hearing the petitions after vacation. No student shall be admitted until further orders.*
7. *Stand over to 16.11.2021.*
8. *All office objections shall be removed, on or before, 15.11.2021, failing which, the petitions shall stand dismissed without reference to the Court on 16.11.2021 and will not be listed on the Board."*

Thereafter, we had heard the matter on 25.11.2021 and posted the same today when we conducted a marathon hearing.

9. Respondent No.5/ Prerna Trust, with regard to the proposed new college to be started at Chikalthan, was before us in Writ Petition No.6613/2021 challenging the letter of intent issued in favour of Sai Sakal Shikshan Sanstha for starting a new college of Arts, Science and Commerce at Chikalthan, Taluka Kannad. Prior thereto, the same petitioner was before this Court in Writ Petition No.664/2020 wherein, this Court passed an order on 17.02.2020 noting that the LOI in favour of the petitioner was granted for starting a new Arts, Science and Commerce College

at Nachanwel and the Government must take an appropriate decision on the said proposal. On 20.08.2020, the Desk Officer, Higher and Technical Education Department, Mantralaya informed the University that the LOI granted for the academic year 2019-20 has been abolished by efflux of time in the light of Section 109(b) of the Maharashtra Public Universities Act, 2016 and the beneficiaries of such LOI be informed accordingly. So also, a list of institutions in whose favour the LOI was issued earlier and found to be disqualified for final permission, was attached to the said communication. The Prerna Trust found itself at Sr.No.3 in such rejected list. Surprisingly, on 21.09.2020, the Government revisited the order passed by this Court on 17.02.2020, took a diagonally opposite view and granted final permission on “no grant basis” to the Prerna Trust. This has been challenged before us in this petition (WP No.7417/2020).

10. On 18.06.2021, Writ Petition No.6613/2021 filed by the Prerna Trust was listed before this Court (Coram : Dipankar Datta, CJ and Ravindra V. Ghuge, J.). After extensively considering the submissions of the Prerna Trust, who suffered a refusal of LOI to the extent of it's proposed new college at Chikalthan, Taluka Kannad, this Court noticed a fraud played by

the Trust of forging and fabricating the FDR, which was mandatorily required to be maintained by investing the minimum prescribed amount of Rs.7 lacs with a centralized bank for a period of five years. The date on the FDR 18.12.2018 was interpolated with and a new date 10.09.2018 was written so as to indicate that the FDR was drawn prior to 30.09.2018 as one of the conditions to be fulfilled while filing the proposal for starting a new college to the University, was the deadline of 30.09.2018 for the academic year 2019-2020. As this forgery came to light, this Court passed a detailed order on 18.06.2021 relying upon *Kishore Samrite vs. State of U.P., (2013) 2 SCC 398*. The said Writ Petition No.6613/2021 was, therefore, dismissed by imposing costs of Rs.10,000/- on the Prerna Trust.

11. In the case in hand, we have seen the photograph of the proposed college at Nachanwel which the Prerna Trust desires to start by the name “Shantarai Arts, Science and Commerce College”. The said photograph is taken on record and marked as “X-1” for identification. A single glance at the photograph indicates that it comprises of half portion having wall of bricks and cement and half of the portion comprises of tin shed. Roof is also of tin sheets. There are no window. There is a

sugarcane field sticking to the structure from the backside. We do not see any water tank on the roof, except one water tank lying on the ground in front of the structure. We have our own doubts as to whether, any washrooms have been constructed befitting students and the teachers faculty. The proposed college would have coeducation and the girl students will have to be treated exclusively so as to have their washrooms separate and away from the gents washrooms. There is no access path from the road to the structure. We are informed that this is the requirement with which a college can be started and a college building has to be developed over a period of five years.

12. We are shocked by such statement made on behalf of the Prerna Trust for the reason that the students from the rural areas are treated differently than the students in the urban areas. The plight of the students in the rural areas in the Marathwada region, which has scorching heat and temperature reaching 45 degree Celsius in between 15th April to 15th of June of each year, with the rainy season of about two months and winter for about two months.

13. Notwithstanding the above, the learned counsel for the University has brought to light another act of mischief on the

part of the Prerna Trust, which was exposed before us in Writ Petition No.6613/2021. A fixed term deposit receipt dated 28.09.2018 issued by the Central Bank of India bearing No.0169703 for an amount of Rs.7 lacs with the maturity date being 28.09.2023, was part of the necessary compliance while tendering the proposal for the Nachanvel proposed college. Based on the said FDR, the University as well as the State Government believed that the requirement of an FDR to be invested for a particular period was fulfilled by the Prerna Trust. The Central Bank of India, Phulambri Branch, District Aurangabad, which issued the FDR, has filed an affidavit dated 19.04.2021 in which, it has been stated that this Prerna Trust deposited Rs.7 lacs for issuance of the FDR on 28.09.2018 and on the very next date, took loan of Rs.6 lacs on 29.09.2018 by opening a loan account, details of which are mentioned in the affidavit. The said loan amount has not been repaid till the filing of the affidavit on 19.04.2021. Further details are mentioned in the affidavit that the Bank got the loan amount appropriated as against the maturity amount in the FDR on 16.12.2020. A credit effect has been given in the statement of loan maintained by the Bank in it's ordinary and regular course of business.

14. The colour laminated copy of the said FDR No.0169703 is taken on record and marked as “X-2” for identification.

15. The Bank has further stated in paragraph 6 that the Prerna Trust had earlier done the same act by opening an FDR on 10.12.2018 for an amount of Rs.7 lacs. It is the same FD bearing No.0169762 which was dealt with by this Court as an act of forgery, while delivering the judgment in Writ Petition No.6613/2021. Even with regard to the said FDR, the Prerna Trust had taken a loan of Rs.6,30,000/- immediately on the next date i.e. 11.12.2018. The same modus operandi was adopted and to the misfortune of the Prerna Trust, this act was exposed before this Court when the order dated 18.06.2021 was passed, though this Court was not aware that the FDR was subjected to a loan account on the very next date. Treating the said act as the first attempt of forgery of changing the date of FDR from 10.12.2018 to 18.09.2018, we had shown leniency and imposed costs of Rs.10,000/-. The affidavit of the Bank further indicates that it had received a letter from the Police Station, Osmanpura requesting for a photostat copy of the FDR No.0169762.

16. The modus operandi of the Prerna Trust is quite

innovative. It used to first deposit the amount with the concerned Bank and used to acquire the fixed deposit receipt (FDR). It would then prepare a coloured photostat (xerox) copy of such FDR. On the next date, the Trust officials would carry the original FDR to the Bank and open the loan account of the maximum amount on the said FDR. The colour photostat copy would be tendered to the University/ Government to create a picture that the original FDR is submitted.

17. It is thus, clear to us that this Prerna Trust has been repeatedly indulging in acts of forgery and that too in the field of education. The courage shown by the person responsible for the fraud is astonishing. The law laid down in *Kishore Samrite (supra)* is not only squarely applicable to the Prerna Trust, but on this occasion, we need to tow a stern and strict line so as to ensure that such elements and tendencies do not prosper in the academic field.

18. We are, therefore, refusing permission to the Prerna Trust from admitting students. **This Writ Petition No.7417/2020 is partly allowed in terms of prayer clause A.** The impugned letter of intent dated 31.01.2019 and the final permission dated 21.09.2020 stand quashed and set aside.

19. To curb such fraudulent educational trusts from indulging in such acts and commencing colleges and schools with bare minimum or inferior infrastructural facilities, we are issuing general directions as under :-

(a) We direct all the Universities in the State of Maharashtra as well as the Government of Maharashtra, not to entertain any further proposal of respondent No.5/Prerna Trust for starting any college or even a school for a period of TEN years from 2021.

(b) If any further act of fraud is noticed by the University or the Education Department in the State of Maharashtra, the Prerna Trust should be permanently prohibited from opening a new college or school.

(c) We are imposing costs of Rs.1 lac on respondent No.5/Prerna Trust to be deposited with the Aurangabad University on or before 31.12.2021, failing which, the District Collector, Aurangabad shall initiate proceedings for recovery of the said amount as arrears of land revenue under the Maharashtra Land Revenue Code, 1966.

(d) We direct the Registrar of Respondent No.4/ University to register an FIR against the trustees of respondent

No.5/ Prerna Trust in the light of this order for the fraud played on the University with regard to the earlier FDR No.0169762 as well as FDR No.0169703 dated 28.09.2018.

(e) We further direct respondent No.4/ University to carryout a thorough inspection of the existing colleges of respondent No.5/ Prerna Trust to assess as to whether, the conditions and standards of education as required under the Maharashtra Public Universities Act, 2016 and it's statutes are being maintained and in the event of any deficiencies, we direct that action be initiated against such colleges.

(f) We direct the State Government and all it's Education Departments as well as the Universities in the State of Maharashtra, to refuse permission to such education trusts/ societies who desire to start a new college or school with tin sheds, without proper or tin sheet washrooms, inferior infrastructure, without a well equipped library, drinking water facility, etc..

(g) The State Government shall prepare guidelines, on or before 31.03.2022 for establishing proper colleges, institutions and schools in the light of the recommendations of the Committee, whose Chairman was Dr.Narendra Jadhav (former

Vice Chancellor of Pune University) and report compliance of these directions to the learned Registrar (Judicial) of this Court, on or before 15.04.2022.

(h) The above directions shall equally apply to the Department of Secondary and Higher Secondary Education, State of Maharashtra, with regard to starting new schools or junior colleges.

(i) The Registrar (Judicial) of this Court shall forward a copy of this order to the Chief Secretary, State of Maharashtra, the Principal Secretary, Higher & Technical Education Department and the Principal Secretary, School Education & Sports Department, State of Maharashtra.

20. Insofar as prayer clause B is concerned, we are not entertaining this petition as the academic year for which the proposal of the petitioner/ Mawala Sanstha was forwarded, is already over and a new perspective plan is likely to be drawn by the University. The said prayer is, therefore, rejected.

21. By consent of the parties, Writ Petition Nos.6729/2019 and 6540/2019 are disposed off. All the pending Civil Applications are also disposed off.