

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

915 WRIT PETITION NO.8017 OF 2016

Lokhit Kala Va Krida Mandal, Aurangabad,
Through its Secretary namely :
Shaikh Gulam Rasul Katthu
Age : 41 years, Occu.: Agril.,
R/o.: House No. 54, Galli No.3,
Hussain Colony, Pundaliknagar,
Aurangabad

... PETITIONER

versus

1. The State of Maharashtra,
Through its secretary,
Higher and Technical Education,
Department, Maharashtra State,
Mumbai-32
2. Director of Higher Education,
Maharashtra, State, Pune.
3. Joint Director of Higher Education,
Aurangabad Region, Aurangabad.
4. Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad,
University Campus, Aurangabad
Through its Registrar
5. Anand Charitable Sanstha,
Ashti, Tq. Ashti, District Beed,
Through its Secretary / President,
C/o. Principal of Proposed College,
i.e. Anand Charitable Societies
Art, Commerce and Science College,
Tintarwani, Tq. Shirur (Kasar),
District : Beed.

... RESPONDENTS

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Mr. A.N. Nagargoje, advocate for the petitioner.
Mr. S.N. Kendre, A.G.P. for respondent nos. 1 to 3.
Mr.S.S. Thombre, advocate for respondent no. 4.
Mr. B.T.Bodkhe, advocate for respondent no. 5.

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**CORAM : SUNIL P. DESHMUKH AND
ABHAY AHUJA, JJ.**

DATE : 23rd February 2021.

JUDGMENT (PER COURT)

1. Rule. Rule made returnable forthwith with the consent of parties.

2. Petitioner aggrieved by letter dated 21-06-2016 issued by respondent no. 4 - Dr. Babasaheb Ambedkar Marathwada University (BAMU), Aurangabad whereunder request to accept the payment of fees has been declined for the tender being beyond stipulated period, is before the court.

3. Reference to background in which the petition has been filed may facilitate its appreciation.

4. Petitioner - an educational institution, had submitted a proposal on 30-10-2010 to open a senior college at village Tintarwadi, Taluka Shirur (K), District Beed for

academic year 2011-2012 pursuant to the perspective plan of Respondent No. 4 - Dr. Babasaheb Ambedkar Marathwada University (BAMU), Aurangabad. According to petitioner, the University, finding that petitioner's proposal fits into the scheme, had recommended the same to Respondent No. 1 - the government on 28-04-2011. However, respondent no. 1 had turned down said proposal under an order dated 07-05-2012. According to petitioner, the order being un-reasoned while reasons were expected, it had approached this court under writ petition bearing no. 9867 of 2015 in which division bench of this court had passed an order on 23 February 2016, as under :

"Heard. For the same reasons which are assigned by this Court while disposing of the Writ Petition No. 6328 of 2012 (Mai Mahila Va Bal Vikas Shikshan Sanstha, Deulgaon (Ghat), Tq. Ashti, Dist. Beed Vs. The State of Maharashtra and others with connected Writ Petitions thereto, decided on 24/09/2013, the impugned order dated 7th May, 2012, which is annexed at Exhibit-E page 51 of the compilation of the Writ Petition, is quashed and set aside. Recommendations made by University are placed back before Respondent No.1 State Government, for its fresh consideration. However, as in reply affidavit, some lacunae have been pointed out, we direct the Respondent No.4 University again to verify the claim made in the proposals and submit its report to Respondent No.1 - State Government, if necessary, respondent No.4 University may charge reasonable processing fees again from petitioners. The report of the University shall reach respondent No.1 within two months from today. After such report is received,

Respondent No.1 shall hear the petitioner and take necessary decision within a further period of three months.

2. We are imposing this time limit only to see that, in case State Government grants necessary permission, the senior college should be in a position to start functioning at least from next academic year i.e. 2016-2017.

3. The Writ Petition stands disposed of”.

5. Learned counsel for the petitioner submits accordingly it had put in a request dated 14-03-2016 to University to follow aforesaid order and it was only on 04-06-2016, petitioner had received a communication dated 02-06-2014 directing to deposit a sum of Rs. 1,25,000/-. Learned counsel further purports to contend that in pursuance of communication, on 18-06-2016 there had been tender of the amount, however, the same had not been accepted and impugned communication dated 21-06-2016 has been issued for the reason that the tender of amount and the documents have been submitted belatedly, beyond time i.e. after 15-06-2016, since for new colleges after said date no proposal can be accepted.

6. It is contended that the petitioner cannot be blamed for alleged delay as the University had not done its bit

pursuant to the order passed by this court on 23-02-2016. Had the communication been received earlier, the reason for which the request of petitioner is declined, would not have occurred at all. Learned counsel purports to submit that for aforesaid, the petitioner cannot be faulted with as communication by the University had been issued belatedly and that amount had been tendered almost immediately. He submits that the matter had travelled further and pursuant to the perspective plan of 2016-2020, while there had been need of a college at the place where the petitioner had applied for, a proposal by other institution has been accepted and the same has also been challenged in the present matter. Over and above aforesaid, he submits that in the further perspective plan of 2021-2025, the village of petitioner is included showing need of a senior college and in the circumstances, the proposal which has been submitted in the year 2010, be considered.

7. He submits that the proposal submitted by it should be deemed to be alive for the subsequent perspective plans. He purports to refer to and rely on a few orders viz; an order passed on 28th December 2015 in a group of writ petitions bearing nos. 12395 of 2015 and companion matters

as well as its confirmation vide order dated 23rd February 2016. He further places reliance on the order dated 25th November 2019 in writ petition no. 4313 of 2019 whereunder, the proposal submitted by petitioner therein for the academic year 2019-2020, was directed to be considered for the academic year 2020-2021.

8. In the present matter, the scenario is quite different. Petitioner had in fact applied for the academic year 2011-2012 in the year 2010 pursuant to perspective plan for the period 2011-2015. While proposal had been recommended by the University, the same had been rejected by the State and the court had directed the University to re-examine the proposal of petitioner charging fees therefor within a period of two months. Neither the University appears to have moved within the period referred to by this court under its order nor the petitioner had moved on insisting upon the University to do its bit pursuant to the order and had let the period given under order of this court lapse. It appears that the University, after expiry of the period had issued a communication to the petitioner and the petitioner as well it does not appear had moved on immediately looking at that the communication had been received on 04-06-2016, it is

only on 18-06-2016 there was tender of amount, by which time effect under the government stipulation referred to in impugned order intervened and the proposals after the period referred to thereunder were not to be considered.

9. It further appears that pursuant to perspective plan for the year 2016-2020, there had been proposals invited, proposal of present respondent no. 5 had been examined, recommended, considered and accepted. It appears that respondent no. 5 has already started functioning from academic year 2019-2020 and has been running a senior college since then. Said institution is running a senior college at the place where the petitioner had applied for.

10. The order in writ petition no. 4313 of 2019 (supra) appears to have been on the background that for the academic year 2019-2020 there had been letter of intent issued to respondent no.3 therein. However, said letter of intent had been cancelled and negated and there had been no proposal considered in respect of a place for which proposals were made and while the period for making proposal had expired for the year 2020-2021. Since the letter of intent to respondent no. 3 had been cancelled, it was in

such a case, that a concession appears to have been indulged into by the division bench.

11. Respondent no.5's contention is that in respect of perspective plan for the year 2016-2020, the petitioner has not insisted upon in time for consideration of its application. In the process challenge being posed by petitioner to the permission granted to respondent no. 5, wanes out and, thus, is not sustainable.

12. There is no application moved by petitioner to continue to consider its proposal for the perspective plan of 2021-2025 before any authority nor before this court. Such a request is being made during submission now after expiry of period.

13. Having regard to the background as referred to above, the petitioner had applied in 2010 for the year 2011-2012, which had not been considered under the earlier perspective plan of 2016-2020, the request to consider a proposal of 2010 for the perspective plan of 2021-2025 is difficult to be acceded to, while certain requirements / lacunae in proposal of petitioner had been directed to be

examined and period of proposal from 2021-2025 appears to have been over and further that while petitioner's proposal had not at all been forwarded by University to State Government.

14. The petitioner in not being diligent and not taking timely steps including that for 2021-2025, it does not appear to be a case wherein it can be said that the foundation sufficiently strong has been emerging to give indulgence to petitioner under discretionary powers of this court. The challenge fails. The petition, thus, crumbles down and is dismissed. Rule discharged.

(ABHAY AHUJA, J.)

(SUNIL P. DESHMUKH, J.)

Para 8 [There is yet another perspective plan of 2021-2025 wherein need of senior college is shown and has arisen at the place where petitioner had applied for in 2010. Pursuant to the procedure, it does not appear that petitioner had made any efforts to apply for the same within time] # **shift**.

Para 3 [for 2011-2016 while in the perspective plan of 2016-2020 as well the village had been included.] * **shift**