

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

WRIT PETITION NO. 13768 OF 2016

Dnyan Vidnyan Shikshan Prasarak Mandal .. Petitioner
Vs.
The State of Maharashtra & Ors. .. Respondents

Mr. Narendra V. Bandiwadekar i/b Mr. Prashant Bhavake for the Petitioner.
Mr. N. C. Walimbe, AGP for Respondent No.1-State.
Mr. D. V. Sutar for Respondent Nos.6 & 7.

CORAM : **R. D. DHANUKA &**
ABHAY AHUJA, JJ.
DATE : **20th SEPTEMBER, 2021.**

P. C. :

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner seeks a writ of certiorari for quashing and setting aside the order dated 03.02.2016 issued by respondent no.1 thereby rejecting the proposal of the petitioner-Institution starting a new Senior College/Mahavidyalaya and for order and direction to grant permission to the petitioner-Institution to start a new Senior College/Mahavidyalaya at Ganeshwadi (Beedshed), Taluka Karveer, District Kolhapur by taking into consideration the recommendation of respondent no.2-University.

2. The petitioner had submitted their application/proposal on 11.07.2009. Respondent no.2 recommended the said proposal of the petitioner to respondent no.4. Respondent no.4, however, pointed out certain defects in the said proposal on 19.11.2011. It is the case of the petitioner that after receipt of the said letter dated 19.11.2011 the Registrar rectified the defects pointed out by respondent no.4 and submitted the compliance report. It is the case of the petitioner that respondent no.2's committee after inspection submitted report to respondent no.2. On 21.05.2012 respondent no.3 informed the petitioner that the proposal of the petitioner came to be rejected by respondent no.5 and, thus, the proposal had not been recommended to the State Government for granting permission.

3. It is the case of the petitioner that respondent no.1, however, granted permission in favour of another Institution Shri Sadguru Shikshan Prasarak Sanstha, Kasaba Beed, Taluka Karveer, District Kolhapur to start fresh Women Senior College at adjavent village Kasaba Beed. The petitioner preferred Writ Petition No. 8176 of 2012 before this Court impugning the said communication dated 21.05.2012 rejecting the proposal made by the petitioner. This Court vide order dated 12.03.2013 directed the respondents to consider the proposal of the petitioner-Institution afresh. Respondent nos.3 and 4 formulated two members committee for inspection to find out the distance between two lands of the petitioner-Institution on 11.09.2013. Respondent no.2-University informed the petitioner that the proposal of the petitioner for starting new Senior College is declared disqualified since 3 Acres land were not situated at one spot. The petitioner aggrieved by such decision and filed writ petition No. 2781 of 2015 before this Court. By an order dated 21.07.2015 this Court disposed of the said writ petition and directed the respondents to take decision as early as possible preferably within four weeks from today. Respondent no.1 once again rejected the proposal on 03.02.2016. The petitioner, thus, filed this petition.

4. Mr. Bandiwadekar, learned counsel for the petitioner invited our attention to order dated 04.02.2021 passed by Division Bench of this Court in this petition directing respondent no.1 to apply its mind afresh and to consider the petitioner's proposal for a degree college. This Court, however, directed that the impugned order dated 03.02.2016 shall be treated as show cause notice and the petitioner be permitted to show cause and comply with the requisitions therein and directed the State Government to apply its mind afresh and to consider the said proposal for a degree college. However, learned AGP took some time to take instructions. This Court made it clear that in case the stand of the State Government was that there were other provisions of law besides the Government Resolution dated 02.09.2013 which need to be complied with by the petitioner's college, such requirement would be

communicated on the next date of hearing. This court made it clear that the State Government is permitted to issue further requisition besides those communicated in the impugned communication dated 03.02.2016.

5. The writ petition thereafter appeared before this Court on 05.04.2021. This Court directed the petitioner and the State Government to inform as to whether the perspective plan under which the application was made was in existence and whether any effective relief as of today regarding starting of the petitioner's college under the perspective plan can be granted and adjourned the matter to 20.04.2021. On 17.08.2021 this Court granted one week's time to the State Government to file additional affidavit-in-reply.

6. Learned counsel for the petitioner invited our attention to additional affidavit dated 20.08.2021 filed by respondent no.1 and would submit that according to the said affidavit, the place for which the petitioner wanted to seek permission to start degree college is not included in the perspective plan of the University for the academic years 2019-20 to 2023-24. It is submitted by the learned counsel for the petitioner that the petitioner cannot be made to suffer because of the delay on the part of the respondent and rejecting the proposal of the petitioner without any basis.

7. Learned AGP placed reliance on the additional affidavit filed by respondent no.1 and would submit that for the academic year 2019-20 to 2023-24 the place for which the petitioner wanted to start degree college is not included in the perspective plan and thus, this Court cannot grant any relief in favour of the petitioner as on today.

8. In view of the subsequent development, we are not inclined to go into the issue whether there was any delay on the part of the respondent while considering the proposal of the petitioner or that the respondent has rightly pointed out deficiency in the impugned orders passed from time to time. The fact remains that the said place, for which the petitioner wanted to seek permission to start degree college is admittedly not included in the perspective plan for the academic years 2019-20 to 2023-24. Considering the present

situation, even if we accept the submission made by the petitioner, we cannot direct the respondent to grant permission to the petitioner with retrospective effect as on today.

9. The petitioner, in this circumstance, may take its own decision to file appropriate proceeding against the respondents. It is however, made clear that if the said place is included in the perspective plan for which the petitioner sought permission, the respondent shall consider the said application already made subject to compliance with any other additional requirements as may be warranted at the stage of considering the fresh proposal to be made by others.

10. The writ petition is disposed of in the aforesaid terms. No order as to costs.

[ABHAY AHUJA, J.]

[R. D. DHANUKA, J.]

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