

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION**PRACHI
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Date: 2021.12.23
10:57:02 +0530**WRIT PETITION NO.6544 OF 2021**

Sant Tukaram Shikshan Sanstha

.. Petitioner

Versus

The State of Maharashtra & Ors.

.. Respondents

Mr.V.P. Sawant, Senior Advocate a/w Mr.Nitin S.Dhumal for the petitioner.

Mrs.P.N. Diwan, AGP for the respondent nos.1 to 3-State.

Mr.Ajit Anekar a/w Ms.Urvi Vaidya i/by Auris Legal for the respondent no.7.

Mr.Prathamesh Bhargude a/w Mr.Sumit Sonare for the respondent no.8.

Mr.Nagesh Chavan for the respondent no.9.

Mr.Prasad R. Shinde, under Secretary, Higher & Technical Education Department, Mantralaya.

**CORAM : R.D. DHANUKA AND
R.N.LADDHA, JJ.**

DATE : 21st December 2021

P.C.:-

. Mr.Sawant, learned senior counsel for the petitioner seeks permission to delete the name of the respondent nos.4 & 5 from the cause title of the petition.

2. Leave to amend is granted to the petitioner to add additional prayer in view of the statement made by the contesting respondents that the application of the petitioner for starting new degree college is rejected by the State Government by the same order which was passed on 15th March 2018. Amendment to be carried out forthwith. Re-verification is dispensed with. Amendment also to be carried out in the copies supplied to the respondents.

3. Rule. Learned AGP waives service for the respondent nos.1 to 3-State. Mr.Anekar, learned counsel waives service for the respondent no.7. Mr.Bhargude, learned counsel waives service for the respondent no.8. Mr.Chavan, learned counsel waives service for the respondent no.9. The respondent no.6 is absent in this proceedings and also before this Court in Writ Petition No.4805 of 2018. By consent of parties, petition is heard finally.

4. By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned the Government Resolution dated 28th February 2018 to the extent of granting its permission/letter of intent (LOI) to start new colleges to the respondent nos.5, 6 & 7 from the academic year 2018-19 as illegal, arbitrary and unconstitutional. The petitioner seeks further direction to reconsider the proposals for starting new degree college at Taluka Haveli (excluding Municipal Corporation limits) from the academic year 2018-19 of the petitioner society as well as the respondent nos.5, 6 & 7.

5. The petitioner had applied for starting new Degree College (Arts, Commerce and Science) at Wade Bolhai, Taluka Haveli from the academic year 2016-17. State Government however, has not granted its permission by issuing LOA in favour of the petitioner. Pursuant to the modified public notification dated 6th December 2017 issued by the University, the petitioner society has submitted a detailed proposal to the respondent no.4 University. The respondent no.4 University has recommended the name of the petitioner on 4th January 2018 and submitted a report. According to the petitioner, the name of the petitioner was recommended by the University to the respondent State Government

on 18th January 2018 at Serial No.4.

6. Application of the petitioner was also considered along with the application of the respondent nos.4 to 9 by the State Government. On 28th February 2018, the State Government passed an order granting LOI in favour of the respondent nos.5 to 7. Applications filed by the Jagruti Foundation, Pune and Sanjay Modak Education Society who are the respondent nos.8 and 9 also came to be rejected on the ground that LOI was already granted in favour of the respondent nos.5 to 7. The respondent nos.8 & 9 herein accordingly filed Writ Petition Nos.4805 of 2018 and 4059 of 2018 respectively.

7. During the pendency of these two petitions, the Division bench of this Court passed an order on 31st March 2021 thereby deferring the hearing of these petitions so that the Joint Director/ Secretary of Higher and Technical Education, Mantralaya can inform the Court as to when fresh hearing would be given to the rival contenders and an order after assessing comparative merit would be passed and in that regard, the fresh scrutiny would be restricted. This Court observed that those who have been disqualified per se, and have accepted the disqualification, would not be eligible for reconsideration. This Court further directed that those colleges/institutions, whose applications have been not considered with the reasoning that these private respondents had already been given Letter of Intent, would be the ones to whom the scrutiny could be restricted. However, this Court requested the Joint Director/Secretary to inform this Court on this aspect.

8. It appears that despite the said order dated 31st March 2021.

the Joint Director proposed to hear all the parties who had applied for various permissions including the respondent nos.5 to 9 and also the petitioner.

9. The petitioner was issued a notice by the Directorate of Education on 10th June 2021 directing the petitioner to remain present on 14th June 2021 with all requisite documents. By another notice dated 14th June 2021, the Directorate of Education postponed the scheduled meeting due to some technical problems.

10. It is the case of the petitioner that the petitioner did not receive any further notice from the Directorate of Education. On 21st September 2021, the petitioner filed this writ petition for quashing and setting aside the Government Resolution dated 28th February 2018 and for an order and direction to reconsider the proposals for starting new degree college at Taluka Haveli.

11. In the meanwhile, the Writ Petition Nos.4805 of 2018 and 4059 of 2018 filed by the respondent nos.8 & 9 respectively came to be heard by this Court. The Writ Petition No.6544 of 2021 filed by the petitioner herein though was filed on 30th August 2021 however was not on board. None of the parties pointed out that this petition is pending.

12. By a judgment dated 2nd December 2021, this Court quashed and set aside the order dated 15th March 2018 refusing to grant Letter of Intent in favour of the petitioner for starting new college and granting Letter of Intent in favour of the respondent nos.5 to 7 for the roster point of Haveli and restored their applications before the State

Government. This Court directed to reconsider the applications of the the respondent nos.5 to 9 herein afresh in accordance with the law and after following the provisions of the Maharashtra Public Universities Act, 2016 shall pass a fresh order within four weeks from the date of communication of the said order without being influenced by the impugned order/communication dated 15th March 2018 which is quashed and set aside by recording reasons. In so far as the respondent no.6 is concerned, the respondent no.6 was absent though served.

13. Mr.Sawant, learned senior counsel for the petitioner submits that the application filed by his client also was rejected by the State Government on the same ground. He, on instructions, states that his client was not aware of the pending Writ Petition Nos.4805 of 2018 and 4059 of 2018. He submits that his client came to know about the penency of these two writ petitions and interim order dated 17th April 2018 passed by the Division Bench of this Court only when the notice dated 10th June 2021 came to be served upon the petitioner with a request to remain present before the Directorate of Education.

14. Learned counsel for the contesting respondents pointed out that the application of the petitioner was also rejected by the State Government on the similar ground that LOI was already issued in favour of the respondent nos.5 to 7. Learned senior counsel submits that the petitioner is similarly situated to the case of the respondent nos.8 and 9 in whose favour, this Court quashed and set aside the impugned order and remanding back the matter for reconsideration on its own merits.

15. This petition is vehemently opposed by the learned counsel

for the respondent nos.7, 8 and 9 on the ground that the petitioner was fully aware of the proceedings filed by the respondent nos.8 and 9.

16. It is submitted that the petitioner has filed this proceeding only after waiting for the outcome of the order that would have been passed in furtherance of the order dated 31st March 2021 passed by this Court.

17. Learned counsel submitted that there is gross unexplained delay on the part of the petitioner in filing this petition. Thus no opportunity should be granted to the petitioner for reconsideration of its case along with the application of the respondent nos.5 to 7 and 8 to 9 before the State Government.

18. It is submitted that if the case of the petitioner is directed to be considered along with the case of the respondent nos.5 to 9, at this stage, their interest would be seriously prejudiced.

19. It is not in dispute that the petitioner was also one of the applicants for seeking permission to start new college based on the recommendation made by the University. The application of the petitioner was also considered by the State Government along with the application of the respondent nos.5 to 9. The reasons recorded by the State Government while rejecting the application of the petitioner and the respondent nos.8 and 9 and while issuing LOI in favour of the respondent nos.5 to 7 are identical. When this Court finally disposed of these two writ petitions by judgment dated 2nd December 2021, this writ petition which was already filed by the petitioners was pending.

20. We are inclined to accept the statement of Mr.Sawant, learned senior counsel for the petitioner that the petitioner came to know for the first time about the pendency of these two petitions only after the notice dated 10th June 2021 came to be served upon the petitioner by the Directorate of Education with a request to remain present before the Directorate of Education.

21. Be that as it may, the rights of the petitioner also are restored for reconsideration by virtue of the final order passed by this Court on 2nd December 2021. Even at the earlier stage, when this Court passed interim order, this Court has proposed to disqualify only those applications who had accepted those disqualification.

22. The petitioner filed this petition only upon receipt of the notice from the Directorate of Education. In our view, there is thus no delay in filing the writ petition. Since the petitioner is similarly situated to the respondent nos.8 and 9 and also to the respondent nos.5 to 7 whose applications are restored to file before the State Government, no prejudice would be caused to the respondents.

23. We are of the view that the petitioner shall also be given an opportunity to participate while reconsidering the application filed by the respondent nos.5 to 9.

24. Ms.Diwan, learned AGP for State, on instructions, states that they leave it to the discretion of the Court to pass an appropriate order in the facts and circumstances of this case. Statement is accepted. Learned AGP further, on instructions, states that no final order has been passed

till date pursuant to the said order dated 2nd December 2021 passed by this Court directing the State Government to reconsider the applications of the petitioner and the respondent nos.5 to 9. Statement is accepted.

25. We accordingly pass the following order:-

(i) The impugned order dated 15th March 2018 refusing to permit the petitioner to start new degree college (Arts, Commerce and Science) at Wade Bolhai, Taluka Haveli is quashed and set aside.

(ii) Application of the petitioner is also restored to file before the State Government and to be considered along with the applications of the respondent nos.5 to 9 on its own merits and in accordance with law after following provisions of the Maharashtra Public Universities Act, 2016 without being influenced by the impugned order/communication dated 15th March 2018.

(iii) The order shall be passed by the State Government on or before 10th January 2022.

(iv) The prayer clause (a) of the petition is allowed on the basis of which the impugned order dated 15th March 2018 came be passed.

(v) The order that would be passed by the State Government shall be communicated to the petitioner within one week from the date of passing such order.

(vi) The State Government shall not issue LOI in favour of the successful parties for a period of two weeks from the date of communication of the order.

(vii) The State Government shall pass a reasoned order while considering the application of the petitioner also.

26. Writ petition is allowed in aforesaid terms. Rule is made absolute. No order as to costs. Parties to act on the authenticated copy of this order.

R.N.LADDHA, J

R.D. DHANUKA, J.