



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

916 WRIT PETITION NO.5250 OF 2021

- 1 Loknete Dr. Balasaheb Vikhe Patil,
(Padmabhushan Awardee),
Pravara Rural Education Society,
At and Post Loni (Kh), Dist. Ahmednagar,
Through its Secretary.
- 2 The Principal,
Arts, Commerce, Science and Computer
Science Senior College, Ashvi (Kh),
Tq. Sangamner, Dist. Ahmednagar.

... Petitioners

... Versus ...

- 1 The State of Maharashtra,
Through its Secretary,
Higher and Technical Education,
Maharashtra State,
Mantralaya, Mumbai – 32.
- 2 Savitribai Phule Pune University,
Through Registrar,
Ganeshkhind Road, Ganeshkhind,
Pune – 411 007.
- 3 The Directorate of Higher Education,
Government of Maharashtra,
Central Building, Pune – 411 001.

... Respondents

...

Mr. V.D. Hon, Senior Counsel i/b Mr. A.V. Hon, Advocate for petitioners

Mr. P.S. Patil, AGP for respondent Nos.1 and 3

Respondent No.2 - served

...

AND

917 WRIT PETITION NO.5274 OF 2021

- 1 Loknete Dr. Balasaheb Vikhe Patil,
(Padmabhushan Awardee),
Pravara Rural Education Society,
At and Post Loni (Kh), Dist. Ahmednagar,
Through its Secretary.
- 2 The Principal,
Arts, Science and Commerce College,
Kolhar, Tq. Rahata, Dist. Ahmednagar.

... **Petitioners**

... **Versus** ...

- 1 The State of Maharashtra,
Through its Secretary,
Higher and Technical Education,
Maharashtra State,
Mantralaya, Mumbai – 32.
- 2 Savitribai Phule Pune University,
Through Registrar,
Ganeshkhind Road, Ganeshkhind,
Pune – 411 007.
- 3 The Directorate of Higher Education,
Government of Maharashtra,
Central Building, Pune – 411 001.

... **Respondents**

...

Mr. V.D. Hon, Senior Counsel i/b Mr. A.V. Hon, Advocate for petitioners

Mr. P.S. Patil, AGP for respondent Nos.1 and 3

Respondent No.2 - served

...

CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.

DATE : 09th JANUARY, 2024

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Both the petitions are filed by the same institution for the issuance of writ of mandamus directing respondents to grant grant-in-aid as per the provisions of Government Resolution dated 08.08.1991 to run the college – one at Ashwi (Kh), Sangamner, Dist. Ahmednagar and another at Kolhar, Tq. Rahata, Dist. Ahmednagar. Issue of writ of certiorari has also been prayed in the nature by deleting the condition of permanent no grant basis in the communication dated 14.07.2001 for running those colleges.

2 Heard learned Senior Counsel Mr. V.D. Hon instructed by learned Advocate Mr. A.V. Hon for the petitioners and learned AGP Mr. P.S. Patil for respondent Nos.1 and 3, in both matters.

3 The learned Senior Counsel submitted that petitioner No.1 is a

charitable Trust and also registered under the Societies Registration Act. Petitioner No.1 is devoted in spreading education in rural and tribal areas situated in the State of Maharashtra. The Government through its Department of Education and Employment resolved that the institutions which are granted approval to run Arts, Commerce and Science College on unaided basis would be granted 100% grant-in-aid in step wise manner. As per the policy of the Government, the institutions which were granted permission to start new Arts, Commerce and Science College on unaided basis were to be granted 100% grant-in-aid. It was resolved that the institutions would be entitled for 25% grant-in-aid in fourth year from starting of the college, 50% grant-in-aid in the fifth year and 75% grant-in-aid in the sixth year and thereafter 100% grant-in-aid in the seventh year onwards. Such college was started by petitioner No.1 from 2001-02 on permanent no grant basis. It is stated that though there was no policy of the Government, at that time, to grant permission to start college on permanent no grant basis, still the communication in such manner was issued. In fact, it ought to have been granted on no grant basis. It was certified on 18.06.2005 that the college at Ashwi (Kh) is situated in hilly region. There was a policy of the Government of Maharashtra to give grant-in-aid to the colleges situated in hilly region in order to facilitate the students residing in that region to pursue education. It is submitted by the petitioners that one Sachin

Shantaram Borse had made application under the Right to Information Act, 2005 as to whether there is any Government Resolution whereby it is stipulated that the Government can grant permission to start new colleges on permanent no grant basis. Respondent No.1 replied on 23.09.2023 that there is no Government Resolution which stipulates that the Government can grant permission to start new colleges on permanent no grant basis. It is submitted by the petitioners that along with the other educational institutions petitioner No.1 had made representation to the Hon'ble Leader of Opposition, Vidhan Sabha on 24.11.2023 to ventilate their grievance to give grant-in-aid for running the colleges. One of the institutions approached this Court by filing Writ Petition No.4413 of 1999 stating that discrimination has been made. In fact, the Government during the period 01.01.2001 to 24.11.2001 granted permission to start new colleges on grant-in-aid basis. Thus, petitioner No.1 has been put to discrimination. By communication dated 10.09.2018 it was informed by the Education Assistant Director that there are seven colleges which are running on permanent no grant basis. But as regards the hilly region is concerned, the discrimination has been made and few other colleges have been granted grant-in-aid.

4 As regards college at Kolhar is concerned, it has been pleaded by petitioner No.1 that it was started from the academic year 2005-06. By

communication dated 20.03.2009 Director of Education (Higher Education), Pune granted 100% grant-in-aid for the Commerce courses of the said college from the academic year 2007-08 and, therefore, representation was made by petitioner No.1 on 24.11.2010 that the grant-in-aid be given to the Science faculties also, as the Science course was started from the year 2003-04. On 20.06.2014 and 04.08.2014 respondent No.3 had issued communication to all the Principals of the Colleges which were running on grant-in-aid, non grant-in-aid and permanent no grant basis seeking proposals for giving grant-in-aids to the institutions running on no grant basis. Accordingly, proposal was submitted on 25.06.2014. It has been reiterated that the college is receiving 100% grant-in-aid for Arts and Commerce faculty; yet, the Government has not taken decision rather refused to grant grant-in-aid to the Science faculties. Hence, both these petitions.

5 Say has been filed in both the matters on behalf of the Government. It has been tried to be demonstrated by the Government that there is absolutely no discrimination, but it is the outcome of the policy decision of the Government to run the schools on permanent no grant basis. In Writ Petition No.5250 of 2021 in its affidavit-in-reply Dr. Kirankumar Laxman Bondar, Joint Director, Higher Education, Pune Region, Pune has explained as to how three of the colleges to which the grant-in-aid has been

given does not amount to discrimination to the present petitioner No.1's college. He relied on the decision in Writ Petition No.7810 of 2016 with companion matters decided by this Court on 18.04.2019, in which similar issue was raised and this Court had come to the conclusion that policy decision which the State can take in its wisdom.

6 In affidavit-in-reply to Writ Petition No.5274 of 2021 the same authority has stated that 100% grant for the Arts and Commerce faculty has been accorded by the Government. However, it is specifically stated that when the permission was granted to the petitioner Society to run all the three faculties on non grant basis vide Government Resolution dated 08.08.1991 from the academic year 1999-2000, petitioner No.1 had not started the Science faculty till the academic year 2003-04 on account of non availability of students. Thereafter, the Science faculty had started and received affiliation by the University on 04.08.2004. It is said that in the meeting of Cabinet Ministry held on 24.11.2001 it was decided not to grant permission to new colleges in School Education/Higher and Technical Education/Medical Education Department etc., however, the Government had no objection if the permission is granted on permanent non grant basis. Therefore, as per the policy decision the action has been taken which cannot be said to be discriminately.

7 With the help of both sides we have gone through the documents on record. In fact, there is no much dispute in the same. Much reliance has been placed on the communication by the Public Information Officer to one Sachin Borse dated 23.09.2013 that there is no Government Resolution issued to start higher colleges on permanent non grant basis. Reliance has been placed by the learned Senior Counsel on the decision of this Court in Writ Petition No.4413 of 1999 dated 26.08.2014. However, perusal of the same would show that this Court was of the opinion that the petitioner therein had shown the discrimination as against the other colleges/society in respect of treatment meted out to the petitioner society and, therefore, the petition came to be allowed. When the petitioners have come with a case that the State has acted discriminately, then it should be demonstrated in clear terms. We do not find any document demonstrating the same. Rather the alleged discrimination or different treatment in Writ Petition No.5250 of 2021 has been explained. It appears that in respect of other educational institution it had approached this Court and based upon the facts and circumstances as the hasty decision was taken in respect of one institution and for other no opportunity was given of hearing. The orders were set aside. Here, it is not the case. Further, as regards the hilly area is concerned, it appears that the college at Sangamner comes under hilly area, but in respect of colleges at Dist. Satara it was granted as special case and not only

on the ground that those colleges were in the hilly area. Following are the observations from the Judgment of this Court (CORAM : S.V. GANGAPURWALA AND A.M. DHAVALA, JJ.) in **Writ Petition No.7810 of 2010** and companion matters decided on 18.04.2019 :

“10. Grant-in-aid cannot be claimed by the institutions as of right. The petitioners are running senior colleges. Higher education is not a fundamental right. The same does not come within the purview of Article 21-A of the Constitution of India. The grant-in-aid is dependent upon the policy decision of the State.

11. It is the prerogative of the State to formulate a policy. The powers of judicial review with regard to the policy decision of the State and more particularly, the policies involving the economic and financial ramifications would be in a narrow compass. In such matter the Court would be loath to exercise its powers of judicial review. The Court does not possess the necessary expertise to consider the policy with regard to the disbursal of grants.

12. This Court would certainly intervene if the discrimination is caused to the petitioners vis-a-vis the policy with regard to grant-in-aid. Arbitrariness does not have a place in the society governed by the rule of law. Arbitrariness is antithesis to the rule of law, fair play, justice, equity and good conscious. It is only if the petitioners are in a position to show discriminatory treatment or that policy is unreasonable or against the statutory provision, then this Court would certainly invoke its jurisdiction under Article 226 of the Constitution of India.”

In this case also the reliance has been placed on the Cabinet Ministry's decision dated 17.05.2001. Thereafter also Cabinet Note dated 27.06.2001 was placed before this Court, wherein the Committee decision in the meeting dated 17.05.2001 was reiterated. This Court, therefore, opined that pursuant to the said Cabinet Note and the decision of the Committee though a formal Government Resolution was not issued; yet, it was the policy decision of the Cabinet, which was to contour of Article 162 of the Constitution of India. It was specifically held that it was a prerogative of the State to provide grant-in-aid to the institutions or not. It cannot be monitored by this Court unless as aforesaid arbitrariness is shown. Even in the college at Kolhar when 100% grant-in-aid has been given to the Arts and Commerce faculties, petitioner No.1 cannot insist that it should be given to the Science faculty also. There is no explanation as to why at the same time the Science faculty was not started by petitioner No.1. Admittedly it has been started belatedly. There also petitioner No.1 failed to demonstrate discrimination and, therefore, no case is made out to exercise constitutional powers, when it comes to the prerogative of the State instrumentality. Petitions stand dismissed.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)