



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

939 WRIT PETITION NO.15388 OF 2023

Shrikrishna Educational And Cultural Mandal Through Its
President – Gulabrao s/o Baburao Deokar, age 66 yrs, Occ.
Agriculture, R/o 56/57, Ramdas Colony, near Omkareshwar
Mandir, Jalgaon

VERSUS

The Union Of India Through Secretary And Others

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Advocate for the Petitioner : Mr. P.R. Katneshwarkr i/b. Mr. A.A.
Fulpagar

DSGI for Respondents 1-3 : Mr. A.G. Talhar

AGP for Respondents 4,5 : Mr. N.S. Tekale

Mr. Wasif Shaikh Advocate h/f Mr. M.D. Narwadkar Advocate
for Respondent No.6.

Mr. A.R. Kale Advocate for Respondent No.7.

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

Dated : March 15, 2024

PER COURT :-

1. Heard Mr. Katneshwarkar, learned advocate appearing for the petitioner, Mr A.G. Talhar, learned D.S.G.I., standing counsel for Union of India on behalf of Respondent Nos. 1 to 3.

2. The Petitioner impugns the order dated 13.12.2023 passed by Respondent No.1-Second Appellate Authority, thereby confirming the order dated 29.8.2023 passed by Respondent No.3 - First Appellate Authority and order dated 29.9.2023 passed by Respondent No.2, rejecting the scheme/application dated 25.4.2023 submitted by the

petitioner seeking letter of intent and letter of permission to start a new Ayurvedic College at Shirsoli Road, Jalgaon.

3. The petitioner contend that on 25.4.2023 he submitted an application/scheme with Medical Assessment and Rating Board - Respondent No.3 seeking permission to establish a new Ayurveda College. Respondent No.3 vide his order dated 29.8.2023 rejected the scheme, pointing out some deficiencies. The petitioner approached First Appellate Authority i.e. Respondent No.2 in terms of section 29 (5) of National Commission for Indian System of Medicine Act, 2020 (for short the Act). However, said appeal was rejected vide order dated 29.9.2023. The petitioner approached Second Appellate Authority i.e. Respondent No.1 under section 29(6) of the Act. Second appeal was rejected without giving sufficient opportunity to the petitioner. Then, the petitioner approached this Court vide Writ Petition no.14374 of 2023. The order of Second Appellate Authority was quashed and set aside by this Court and respondent no.1 was directed to re-consider the appeal on merits. In second round, the petitioner approached to the Second Appellate Authority, however, by giving reason that original certificates/documents were not tendered during the hearing, second appeal came to be rejected under the impugned order dated 13.12.2023.

4. Mr. Katneshwarkar, learned advocate appearing for the petitioner invites our attention to the impugned order passed by Second Appellate Authority. He invites our attention to the written statement tendered before the Second Appellate

Authority, particularly paragraph no.11, wherein deficiencies raised in the proposal of the petitioner and compliances have been depicted in tabular form, which reads as under :-

Deficiencies	Compliance
The Principal was asked to send Bank Statement of Hospital Account Number 005120100000079 from which salary of staff is disbursed. College did not send the Bank Account Statement. Submission cannot be considered shortcoming persists.	The applicant submitted the bank account statement for the Account Number 005120100000079 from which salary of staff is disbursed.
Fire Safety Registration is not provided for the period of 19/08/2022 to 29/05/2023.	Fire Safety Certificate for period 01/07/2022 to 31/01/2023 and 22/12/2022 to 21/12/2023 (hospital) is submitted.
Pollution Board Certificate is not submitted for the period of 01/12/2020 to 04/06/2021.	The applicant had applied to the MPCB vide application dated 23/11/2020 which was forwarded to head office on 04/06/2020. It is also submitted that, since it was for 500 beds, it would take some time for issuance of the same.
Biomedical Waste Certificate is not submitted for the period of 29/04/2022 to 17/01/2023.	Biomedical Waste Certificate dated 01/04/2022 states that, it is valid since 01/04/2022 to 31/01/2023 is also submitted.
Biomedical Waste Receipt is not submitted for the period of 2020-2021.	Biomedical Waste Receipt number 1594 for year 2020-2021 is submitted.

5. Perusal of the order passed by the Second Appellate Authority would show that Second Appeal is dismissed by respondent no.1 for five deficiencies depicted in paragraph no.2 of the order. First objection is as regards to documentary evidence demonstrating disbursement of salary to the staff of the college, second objection is regarding non-production of fire safety registration for the relevant period,

third objection is regarding pollution board certificate, fourth objection is regarding bio medical waste certificate and 5th objection is regarding non-submission of bio medical waste receipt. It has been observed that original copies of the requisite certificates were not tendered during hearing of the second appeal.

6. Mr. Katneshwarkar would point out that the petitioner was never called upon to furnish the original documents. Copies of such documents were already made available on record. The petitioner possess all original certificates. He was never asked to furnish the same during the course of the hearing. The petitioner was always ready and willing to furnish the original certificates. He would therefore urge to set aside the impugned order.

7. Mr. Talhar, learned DSGI appearing for respondent nos. 1 to 3 vehemently submit that the petitioner was under obligation to furnish the requisite documents before the Second Appellate Authority, no fault can be found in the impugned order. As such, he urged that there is no merit in the writ petition.

8. We have considered the submissions advanced on behalf of the respective parties. It is evident from the record that Second Appellate Authority had earlier rejected petitioner's appeal on technical grounds merely giving reason that there was delay of 15 minutes in uploading the documents. Even after relegation of the matter by this Court, Second Appellate Authority has rejected the appeal by

recording technical reasons. Prima facie, the applicant appears to be complaint of every requirement, however, Appellate Authority again rejected Second Appeal giving reason that original certificates are not produced for verification. In this background, we deem it appropriate in the interest of justice to grant one more opportunity to the petitioner to present himself before the Second Appellate Authority alongwith original documents and direct the Respondent No.1/Second Appellate Authority to decide the petitioner's Second Appeal in exercise of powers under section 29(6) of the Act, on it's own merits. Hence, we proceed to pass the following order.

ORDER

- i. Writ Petition is hereby partly allowed.
- ii. The impugned order dated 13.12.2023 passed by Respondent no.1-Second Appellate Authority is hereby quashed and set aside.
- iii. The petitioner is granted liberty to present himself before the Second Appellate Authority on **18th March, 2024 (Monday)** alongwith original documents/compliances on all the points indicated in the impugned order.
- iv. The Second Appellate Authority shall re-consider the Petitioner's Second Appeal and pass appropriate order on it's own merits.

- v. Since the Second Appellate Authority is required to examine the compliances based on original record to be produced by the petitioner, Respondent No.1-Second Appellate Authority shall pass the order **forthwith**, upon hearing the petitioner.
- vi. Writ Petition is accordingly **disposed off** in the aforesaid terms. No costs.

(S. G. CHAPALGAONKAR, J.) (SMT. VIBHA KANKANWADI, J.)

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aaa/-