



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1255 OF 2015

Shri Shikshan Prasarak Sanstha, Sangamner,
Tq. Sangamner, Dist. Ahmednagar.
Through its Chairman
Mr. Sanjay Malpani.
Shri. Omkarnath Malpani Law College,
Sangamner, Tq. Sangamner, Dist. Ahmednagar
Through its Principal
Mr. Dr. P. Ashok Kumar

..PETITIONER

VERSUS

1. State of Maharashtra
Through its Secretary
Higher and Technical Education,
Maharashtra State, Mantralaya,
Mumbai.
2. The Director of Higher Education,
Maharashtra State, Pune.
3. The Joint Director of Higher Education,
Pune.

..RESPONDENTS

....
Mr. A.S. Bajaj, Advocate for petitioner.
Mrs. M.A. Deshpande, A.G.P. for respondents.
....

CORAM : ANOOP V. MOHTA &
SUNIL K. KOTWAL, JJ
DATED : 05th JULY, 2017

ORAL JUDGMENT (Per : ANOOP V. MOHTA, J.)

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2. Petitioner is an education institution submitted a proposal in the year 1994 for opening of a new law college. The permission was granted on 14th May, 1997 by Bar Council of India. Pune university accorded permission. On 23rd June, 1998, State of Maharashtra (the "State") has granted permission to start college for the academic year 1998-99 onwards but without any grant in aid (the "grant"). Hence the petition.

3. The prayers are as under:-

"A) This writ petition may kindly be allowed.

B) By issuing writ of mandamus or any other appropriate writ, order or directions, the respondent Nos. 1 to allow the proposal of petition No.2 College for grant of grant in aid, consequently, the petitioner No.2 be given grant in aid as given to other similarly situated Colleges and for that purpose necessary directions be issued, and any other consequential orders may be passed, found necessary in the facts of the case and law.

D) To grant any other relief to which the petitioners are entitled in the fact of the present case and law.

4. The restricted submission is made that petitioner's entitlement of the grant, based upon the then existing policy, prior to 2001, as similarly situated institutions have been getting the grant phase wise. It is denied to the petitioner on the foundation of petitioner's undertaking that they would not claim such grant. On instruction, it is submitted to restrict the grant at least from 27th March, 2008, the date of last representation/application made by the petitioner.

5. Respondents in their reply opposed the petition as prayed mainly on the ground that the conditional permission to run/start new college dated 23rd June, 1998 was granted. The petitioner has given the undertaking stating that in future, a society/college would not claim any financial help from the State. The college would charge fee from the students as per the State norms.

6. Such undertaking was never contemplated under then existing policy. On the contrary, whosoever granted such permission to open colleges, the State has been providing the phase wise grant. Such under influence undertaking, in the present facts and circumstances, can not be the ground to deny the claim of grant, as all other similarly situated institutions have been getting phase wise grant since the date of permissions. The justification is given by State about the grant to the similarly situated institutions, that as initially there was denial for permission to start new college, but pursuance to the orders passed by the

Court, as the permission was granted, the State themselves automatically based upon the then existing policy extended the grant phase wise, even to such institutions..

7. Petitioner's averment in paragraph no.5 under which circumstances the undertaking was given are not denied in reply. Even otherwise, if it is the case of State Government that they have automatically extended, step by step, grant to all those who have granted permission prior to 2001, then there is no reason to deny the same benefit to the petitioner. The bar after 2001 of permanent non-grant basis is not applicable to the petitioner institution in view of the approval dated 23rd June, 1998. The impugned action of respondents in view of the specific averments amounts to “discrimination”; and “treating equals unequally”. The petitioner has made out a case for the grant.

8. In the present case, on instructions, the statement is made and in view of the application they have filed for grant on 27th March, 2008, we are inclined to mould the relief and held that petitioners entitlement of grant be considered from the date of application dated 27th March, 2008, but based upon the State grant-in-aid policy on the date of permission to start the college. The respondents to follow, step by step, procedures as required to process such grant from 27th March, 2008.

9. This is also for the reason that Division Bench of this Court in **1998 (4) All MR 31 (Bharti Vidyapeeth, Pune Vs. State of Maharashtra and Others)** based upon the order passed by Supreme Court in **AIR 1996 SC 1 (State of Maharashtra Vs. M.P. Vashi and Others)** has specifically observed that the State excuses not to grant such grant on the financial constrain is impermissible. The maintenance cost of education institution are increasing day by day. All students in hilly/rural area, are not in position to pay the increased fees

10. Another judgment is Writ Petition No. 4413 of 1999 (Chatrapati Shikshan and Arogya Prasarak Mandal Vs. State of Maharashtra and Another) delivered by the Division Bench of this Court, whereby it is observed that two similarly situated institutions required to be treated equally when it comes to private grant-in-aid for running such college. The State's action of treating equals unequally is recorded as discriminatory and therefore ordered to grant similar relief.

11. Therefore taking overall view of the matter, we are inclined to pass following order :

ORDER

- (i) Respondent No.1 is directed to allow the proposal of Petitioner No.2 – college for the grant of grant-in-

aid based upon application dated 27th March, 2008 and deal with the same in accordance with the then existing grant-in-aid policy of 1991, phase-wise from 27th March, 2009 and pass appropriate and consequential order accordingly.

(ii) Petition is allowed. Rule is made absolute accordingly. No costs.

(SUNIL K. KOTWAL, J.)

(ANOOP V. MOHTA, J.)

SSD