

(2010) 11 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No. 3631 of 2010

Digitek Krida Vikas Sanshodhan Va Shikshan Bahuuddeshiya
Sanstha

APPELLANT

Vs

The State of Maharashtra and Rashtrasanta Tukadoji Maharaj
Nagpur University

RESPONDENT

Date of Decision : 18-11-2010

Acts Referred:

Constitution of India, 1950 — Article 166(3), 226

Maharashtra Universities Act, 1994 — Section 2(31), 82, 82(5), 83

Citation : (2011) 2 ALLMR 219 : (2011) 1 MhLj 793

Hon'ble Judges : V.C. Daga, J;A. B. Chaudhari, J

Bench : Division Bench

**Advocate : A.I. Sheikh, for the Appellant; B.H. Dangre, A.G.P. for Respondent
No. 1 and B.G. Kulkarni, for the Respondent**

Judgement

V.C. Daga, J.

1 Heard. Rule. Rule returnable forthwith. Heard finally by consent of the learned Counsel for the rival parties.

2. The factual matrix reveals that the Petitioner is a Trust and Society registered under the Bombay Public Trust Act and under the Societies Registration Act. Respondent No. 1 has prepared perspective plan as required by Section 83 of the Maharashtra Universities Act, 1994, wherein it was shown that there was a need to establish two graduate Arts-Social Science, Commerce, Science College with one Home Science College.

3. The Petitioner finding it possible to run Arts College, Home Science and Commerce College offering degrees of Bachelor in Arts (B.A.), Bachelor in Fashion Designing (BDF) and Post Graduate Diploma in Commercial Computer Applications (PGDCCA) respectively at Alipur Tahasil: Hinganghat, District Wardha applied to Respondent No. 2 in the requisite format for permission to start college for the above courses for the Academic Session 2008-09.

4. Respondent No. 2 after completing all the formalities vide its covering letter dated 27.1.2008 forwarded application of the Petitioner with positive recommendation to Respondent No. 1. The application of the Petitioner was not considered. Consequently, the Petitioner invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India by way of Writ Petition No. 4215/2008. Since the Petitioner was not communicated any reason for rejection of its application, the learned A.G.P. appearing in that petition made a statement that the Petitioner shall be communicated with the reasons recorded by the State Government. With the result, on the statement made by the learned A.G.P., Writ Petition No. 4215/2008 was disposed of vide order dated 24.09.2008, permitting the State Government to communicate the reasoned order to the Petitioner.

5. Despite the aforesaid order and positive direction issued by this Court, the Respondent No. 1 - State Government failed to comply with the said order. Consequently, the Petitioner again approached this Court by way of another writ petition bearing Writ Petition No. 5157/2008, which was disposed of by an order dated 8.4.2009 with the following observations.

In the instant case, the casual attitude shown by the State Government is a matter of concern. Because of the inaction on the part of the State Government to communicate its decision to the Petitioner, the Petitioner has to approach this Court by filing two petitions and had to incur lot of expenditure, apart from inconvenience suffered by the Petitioner. We deprecate the attitude of the State Government and direct the State Government to communicate its decision taken in respect of the proposal of the Petitioner as well as reasons given for rejecting the same within fifteen days from the date of communication of this order. The Petitioner, in our view, has made a case for imposing exemplary costs on the State Government. Hence, we direct the State Government (Respondent No. 1) to deposit the costs of Rs. 7,000/-(rupees seven thousand) in this Court within a period of four weeks from the date of communication of this order. On such deposit, it will be open for the Petitioner to withdraw the same.

(Emphasis Supplied)

6. Needless to mention that considering the attitude of defiance adopted by the State Government and casual approach in dealing with the applications of the citizens or the institutions in a casual manner, this Court was pleased to impose costs of Rs. 7,000/-while disposing of the petition with further liberty to the State Government to communicate the reasoned order on the application made by the Petitioner.

7. In spite of the above order, the State Government did not take any positive step. With the result, the Petitioner was again required to knock the doors of this Court by filing third writ petition bearing Writ Petition No. 2472/2009, which again was decided by an order dated 8.3.2010 with the following observations.

Hence, the petitions are allowed. The Respondent is directed to pass a reasoned order in regard to the proposals of the Petitioners and communicate the same to

the Petitioners within a period of one month from the date of this judgment. The Respondent - State should also deposit costs of Rs. 15,000/- (Rupees Fifteen Thousand only) in case of the Petitioners in Writ Petition No. 2909/2009, 2892/2009 and 2472/2009 and Rs. 7,000/- (Rupees Seven Thousand Only) in case of the Petitioner in Writ Petition No. 2911/2009 within a period of one month.

(Emphasis Supplied)

8. Reading of the aforesaid para would show that second time the cost was imposed on the State Government in the sum of Rs. 15,000/-, almost double than the earlier one for non-compliance of the order of this Court.

9. In spite of the aforesaid orders the application made by the Petitioner was rejected in a most casual manner without even communicating a single ground of rejection. No reasons are to be found in the order dated 29.3.2010, communicated to the Petitioner. Again there is a serious lapse and default on the part of the State Government to comply with the orders of this Court. The translated copy of the said order reads thus:

ORDER

In view of the Order passed by the Hon'ble High Court, dt. 3.3.2010, it is informed as under:

Provision has been made in Section 82 of Maharashtra University Act 1994 for granting approval to new colleges. As per this provision, every year an advertisement is being published in news paper for new Colleges on overall consideration of the need of the areas within the jurisdiction of the University and by preparing unified scheme for fair distribution of educational facilities and accordingly applications are being received by the University upto 31st October. The applications so received are being scrutinized through the Colleges and University Development Board and proposals are being forwarded to the Government by the University till 31 December alongwith recommendations of Management Council. Task Force Committee is being constituted on Government level for scrutiny of those proposals. The scrutiny of proposals is being done by the Task Force Committee and later on the Government grant permission to new college by utilizing the discretionary powers u/s 82(5) of the Maharashtra University Act, 1994. As defined u/s 2(31)(c) of said Act, the State Government means the Government of Maharashtra and Government's decision means the Government's decision in accordance with the regulations framed under Article 166(3) of the Constitution of India. The Department accordingly issues orders as per decision of the Government.

While granting permission to new college as provided under the Act, the following general norms are being considered.

(1) The proposals from district having less GER shall be considered for granting permission to new college.

(2) Generally societies from remote areas shall be given priority.

(3) Although norm of population of backward and Minority class has not been set up yet, the aspect of population of Backward Class and Minority shall be considered.

(4) Since the Central Government has directed to increase GER upto 15%, the permission shall be granted to those colleges proving to be helpful in increasing GER to 15% from existing 11% in Maharashtra i.e. increasing GER by average 4%.

(5) Recently the State Government has determined to give admission to D. ED. Diploma after degree and thus in view of that the increasing need shall also be considered.

(6) Though colleges are not proposed in some areas in master plan of the University, the abovesaid aspects/need shall be taken into consideration while granting permission to new college.

(7) The Women's Educational Societies, good management and availability of teacher, these aspects shall be considered while granting permission to college.

(8) It shall also be seen that it will be convenient geographically to the boys and girls from Rural areas to take college education.

For the abovestated reasons proposal of your society for new college was rejected on the Government level.

10. The learned Additional Government Pleader appearing for the State was asked to put her finger on any of the lines of the order, which according to her, could be said to be a reason for rejection of application. She found it difficult, though she tried her best to locate. Without reasons, it is not possible to read the mind of the State Government, as to why the application of the Petitioner in this case was rejected. In the absence of any reason, any order can be said to be an order in breach of principles of natural justice. Needless to mention on that any order of the judicial, quasi judicial or administrative authority has to be a reasoned order. It should be self explanatory order and should not keep the Court guessing for reasons. Reasons provide link between conclusion and evidence. The vital link is safeguard against arbitrariness, passion, prejudice and humour. The reason is a manifestation of mind of the adjudicator. It gives an opportunity to the Court to see whether or not the order is based on relevant consideration to the material on record. [See State of West Bengal Vs. Atul Krishna Shaw and Another, , Kedar Lal v. Babulal Vyas and Ors., 2003 (9) SCC 624 and Suga Ram @ Chhuga Ram Vs. State of Rajasthan and Others,]. In view of the law laid down by the Hon"ble Apex Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , the order must be self contained order, which cannot be supplemented by the affidavit.

11. Here is a case, wherein the institution is approaching this Court on third occasion against the State Government to know reasons for adverse order. On earlier two occasions, opportunity was given to the State Government to communicate reasons for rejection of the proposal made by the Petitioner. This Court granted an opportunity not once but twice.

12. The most casual approach adopted by the State Government needs to be viewed seriously. At any rate, the procedure adopted by the State Government cannot be allowed to stand. The order dated 29.3.2010 can hardly be said to be legal order. In the result, the impugned order, rejecting application made by the Petitioner is quashed and set aside. The State Government is directed to decide the application, made by the Petitioner, afresh on its own merits with a reasoned order following the principles of natural justice within two weeks from the date of communication of this order and communicate its reasoned decision within one week thereof.

13. Petition is allowed in terms of this order subject to payment of costs of Rs. 25,000/- (Rupees Twenty Five Thousand Only) to be paid to the Petitioner, first by the State Government. The State shall recover the same from the Officer following principles of natural justice, who has decided the application, made by the Petitioner, without following directions of this Court and in breach of the principles of natural justice. The State shall report compliance of this order and recovery of cost within three weeks from this order. Learned Additional Government Pleader undertakes to communicate this order to the State Government.

Rule is made absolute in terms of this order with cost as quantified herein.