
(1984) 04 BOM CK 0017
In the Bombay High Court
Case No : Writ Petition No. 490 of 1983

G.P. Gaikwad

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 27-04-1984

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Marathwada University Act, 1974 — Section 43

Citation : AIR 1986 Bom 124

Hon'ble Judges : S.J. Deshpande, J;G.M. Khandekar, J

Bench : Division Bench

Advocate : B.N. Deshmukh, for the Appellant; S.S. Choudhari, Govt. Pleader, B.B. Jadhav, Asstt. Govt. Pleader, K.G. Nawandar, N.P. Chapalgaenkar and A.G. Gadhangankar for P.G. Godhangaonkar, for the Respondent

Judgement

S.J. Deshpande, J.—The Petitioner is the Secretary of Deogiri Shikshan Prasarak Mandal, Parbhani, a registered educational society registered under the Societies Registration Act (21 of 1860). The Mandal is also registered under the Bombay Public Trusts Act, 1950. The Mandal was desirous of opening a college at Parbhani. In accordance with the provisions of the Marathwada University Act, 1974 (XXV of 1974) (hereinafter called "the Act"), an application for affiliation and recognition of the college was made by the Mandal to the Registrar, Marathwada University, Aurangabad, on 25th March, 1982, through its Secretary. This application is in the prescribed form and gives the necessary details as required by the rules and statutes of the University. It is also accompanied by the requisite deposit. The application stated that the Mandal is desirous to start a senior college from June, 1983 at Parbhani.

2. The Petitioner-Mandal has averred in the petition that the application was considered by the Executive Council of the University. The University authorities also forwarded the proposal to Respondent 1 the State of Maharashtra. The forwarding letter marked as Ext. "D" is addressed to the Secretary to the Government, Education and Employment Department, Maharashtra State, by the

Registrar of the University. The letter is dated 12th April, 1983. It mentions that the Executive Council in its meeting held on 14th Dec. 1982, had considered the three proposals of the managements for starting new colleges from June, 1983 and they have been forwarded to the Government for approval under S.43(4) of the Act. In the said letter the Petitioner-Mandal is shown at Serial No.1 and in addition the other two institutions mentioned in the aforesaid letter are: Jintur Shikshan Prasarak Mandal's Arts & Commerce College, Jintur, and Shiv Chhatrapati Shikshan Sanstha's College of Pharmacy, Latur. By this letter the Registrar of the University has stated that since the proposed colleges are to be started from June, 1983, approval of the Government to the above said proposals under S.43(4) of the Act may please be communicated at the earliest.

3. Again on 5th May, 1983, the Registrar, of the University addressed a similar letter to the Secretary to the Government, Education and Employment Department, requesting that the Petitioner along with the other institution namely; Jintur Shikshan Prasarak Mandal, Jintur, are proposed to be started the colleges from June, 1983 and the needful may kindly be done at the earliest. These two letters are at Exhibit "D" collectively. Petitioner states that Respondent No.1 did not favorably respond to the request of the Petitioner. On 27th June, 1983, the Petitioner had addressed a letter to the concerned Officer of Education and Planning Section of the State of Maharashtra. The said letter is written in Marathi which is filed at Exhibit R-2. The relevant portion of the letter is as follows:-

By this letter the Secretary of the Petitioner requested the Government to accord approval to start a new college at Parbhani. It is stated therein that under S.43(4) of the Act the State Government has to consider the application received from the Executive Council for approval. It is also further mentioned therein that the Mandal has started giving admissions to the students and prospectus was also forwarded along with this letter. It is requested by this letter that approval may be granted as early as possible in order to avoid loss to the students.

4. To the surprise of the Petitioner, the Government, by its letter dated 15th July, 1983, addressed to the Secretary of the Petitioner Mandal, informed that the application for giving permission to start a new college has been rejected by the Government and the Mandal has not been granted any permission to start the college. According to the Petitioner, this letter furnishes to cause of action to the petitioner to approach this Court.

5. Petitioner has further averred in the petition that the application to open a new degree college was given by the Petitioners to the Registrar of the University on 25th March, 1982. It is not necessary to summarise the contents of the applications but it does refer to the fact that Parbhani is a district place and there is a widespread demand that a new college be started at that place. It also mentions that hostel facilities will be made available to boys and girls. It further mentions that need is felt by commercial organisations including the feeling of the weaker sections of the Society. This application was duly forwarded to the

University as required by S.43 of the Act along with necessary appendix and formalities as required by the Rules and Statutes of the University. This application was forwarded by the Universities, as mentioned earlier, by its letter dated 12th April, 1982, to Respondent No.1 for grant of approval.

6. The Petitioner states that on 15th June, 1983, the Desk Officer, Maharashtra State, informed the Registrar of the University that the managements of the concerned colleges have not sent their applications to the University. The subject of the letter is regarding the grant of permission to open new colleges for the academic year 1983-84 in the faculties of Arts, Commerce and Science. This letter shows that Respondent No.1 has accorded approval to certain managements of the Institutions which are added to this petition as Respondents Nos. 3,4 and 5. It is the case of the Petitioner that Respondent No.1 has refused approval to the Petitioner and granted approval to Respondents Nos.3 to 5 even though their applications were not submitted to the Registrar of the University as required by S.43(4) of the Act. Perhaps they were received directly by the Government and by this letter, it appears, the Government suggested that the concerned managements should submit their applications to the University concerned and it also expressed certain conditions in para 3 of this letter to which we will refer later.

7. In this petition, Respondent No.1 is the State of Maharashtra, Respondent No.2 is the Marathwada University. Respondent No.3 is the Secretary, Hutatma Bhairji Smarak Vidyalaya Education Society, Wapti Taluka Basmathnagar, Respondent No.4 is the Secretary, Nutan Vidya Mandir Shikshan Santha, Parbhani and Respondent No.5 is the Secretary, Shri Guru Bhudswami Shikshan Prasarak Sanstha, Purna, Dist. Parbhani.

8. The letter of the Government, referred to above, dated 15th June, 1983, is accompanied by the enclosures which has a schedule which contains the list of the colleges to whom permission is granted on no-grant basis. The Respondents Nos. 3to 5 are found in the schedule at Serial Nos. 9 to11. It shows that permission to start new colleges was granted to Respondents Nos. 3 to 5 subject the conditions mentioned in the letter dated 15th June, 1983, by the Government. Petitioner averred that grant of approval to Respondents No.3 to 5 is quite illegal and contrary to law and violative of Art. 14 of the Constitution of India and refusal to grant approval to the Petitioner's college is quite arbitrary, and therefore, Petitioner approached this Court in its extraordinary jurisdiction under Art.226 of the Constitution of India praying that the application for approval forwarded by the University of Respondent No.1 may be considered by the Government. According to the petitioner, it has been discriminated as against Respondents Nos. 3 to 5 which are similarly situated. It is the case of the Petitioner that Respondents Nos. 3to 5, in fact, are not eligible to receive approval at all. In fact, their applications were not received by the University as the letter, dated 15th June, 1983, itself mentions that the managements concerned should submit their applications to the University. It also stated that

Respondents Nos. 3 to 5 do not fulfil the requirements of law and especially the provisions of S.43 of the Act.

9. The Petitioner prays by this petition that Respondent No.1 be directed to give permission to the Petitioner to start a new college at Parbhani and accord approval to its application dated 25th March, 1982, given to the University. The prayer-clause though mentions that approval be granted for a period commencing from June, 1983, now, it will have to be read as approval be granted for the period commencing from June, 1984.

10. Respondent No.1 has filed return to this petition. The return is filed by the Assistant Secretary to the Education Department . In para 2 of the return, it is stated that the Petitioner has no right to challenge the grant of approval in favor of Respondents Nos. 3 to 5. In regard to the information to be communicated to the Petitioner that Respondent No.1 has refused approval, it is stated that on 15th July, 1983, the Government considered the application of the petitioner and did not grant approval to open a new college of Arts and Commerce at Parbhani from June, 1983. The copy of this letter is annexed with the return. This letter as already stated, is of 15th July, 1983. The return further goes on to say that the Government has rightly exercised the power under S.43 of the Act in granting approval for opening new colleges to Respondents Nos. 3 to 5 at Jintur, Parbhani and Purna, respectively. In the return, the main ground is made in para 4, wherein it is explained why Respondent No.4 was granted permission to open a college at Parbhani. It is stated that it is exclusively a Woman's college. About Respondent No.3 it is stated that at Jintur, there are no education facilities and, therefore, permission is granted. In regard to the opening of a new college at Purna, it is stated that it being a business complex and no college education facilities are available around Purna, the approval was granted to open the new college at Purna. The important defence to the petition of the petitioner seems to be made in the return as follows. The same appears in para 4 of the said return.

"I say that the strength of students in existing college at Parbhani during the academic year 1982-83 was near about 850 approximately. I say that as the approval has been granted to open college to the Respondent No.3 at Jintur, Respondent No.4 at Parbhani and the Respondent No.5 at Purna, the Government thought that if approval would be granted to open additional college at Parbhani, there would be unhealthy competition due to inadequate strength of students even in existing college. I say that the petitioner has no right whatsoever to claim approval to open college at Parbhani in view of the circumstances explained above. There is no legal right to the petitioner to claim to open a college at Parbhani...."

This return was filed on 23rd Sept. 1983.

11. We have heard learned Government Pleader on behalf of the State and also the advocates for Respondents Nos.4 and 5. Before we started hearing the petition, we made a suggestion to Respondent No.1 through the learned

Government Pleader, that if Respondent No.1 was favorably inclined to consider the application of the Petitioners in the circumstances that Respondents No. 3 to 5 were actually granted approval despite infirmities and irregularities, which are apparent on the face of the record. However, in spite of our granting three days time to the learned Government Pleader, when the matter came before us again, the learned Government Pleader was unable to tell us the view point of the Government and therefore, we proceeded to decide the petition on the basis of material which is placed before us.

12. At the very outset, we must say that the petition is well-founded and challenge to Art.14 is not only apparent, but it is so formidable that it is impossible to conceive such an action on the part of the Government. The Petitioner applied to the University following the provisions of S.43 of the Act. Section 43 of the Act falls in Chapter VII, which deals with affiliation and recognition. Section 43 contains elaborate provisions in this behalf and comprises of nine sub-sections. The scheme of the said section seems to be that the application for affiliation is to be given to the University, because the University, with the approval of the State Government, prepares plan for the educational development and it is in accordance with the said plan that the need for opening new college and location of institutions for higher education is determined by the University in a manner ensuring an equitable distribution of facilities of higher education, having due regard, in particular, to the needs of the unserved and under-developed areas in the University area. We, may here reproduce the provisions of sub-ss.(1) and (2) of S.43 of the Act:-

"(1) The need for opening any new college shall be determined by the Executive Council in accordance with such plan for educational development as may be prepared by the University, with the approval of the State Government, for the location of facilities of higher education in a manner ensuring an equitable distribution of facilities for higher education, having due regard, in particular, to the needs of the unserved and under-developed areas in the University area.

(2) No application for opening new college, which is not in conformity with such plan, shall be considered by the Executive Council without the approval of the State Government."

Sub-sec.(4) of the said S.43 of the Act provides:-

"The Executive Council shall scrutinise and determine the order of priority of the applications received and forward the results to the State Government for approval."

The next important sub-ss.(6) and (7) of S.43 provide as follows:-

"(6) The Registrar shall submit the application and all proceedings of the Academic and Executive Councils to the Senate and the Senate shall, after such further inquiry as it may think necessary, record its resolution which shall be forwarded to the State Government, together with all proceedings, for deciding

to grant or reject the application, in part or in whole.

(7) Where the application, or any part thereof, is granted, the order of the State Government shall specify the courses of instruction in respect of which the college is to be affiliated, the maximum number of students to be admitted to each such course and the period for which the affiliation is granted, and where the application, or any part thereof, is rejected, the grounds for such rejection shall be stated."

The scheme of S.43 of the Act seems to be provided by sub-s.(3), which contains cls. (a) to (n). A college applying for affiliation to the University shall apply to the Registrar, within the time-limit fixed by the Ordinances made in that behalf, and shall satisfy the Executive and Academic Councils in regard to details, which are mentioned in Cls.(a) to (n) of sub-s. (3) of S, 43, to which we need not make a detailed reference.

13. We are referring to sub-s (3) of S. 43 of the Act only to show that the applications must originate before the University and the statute does not provide that any such application can ever be entertained by the Government directly. The entertainment of the application by the Government in regard to the prayers made by Respondents Nos. 3,4 and 5 is not only unfair, but is totally in violation of the provisions of sub-s (3) of S. 43 of the Act. It is well settled that when a legislation takes place (and) all sovereign reserved power of the Government to that extent is curtailed and it is well settled that when a legislation takes place (and) all sovereign reserved power of the Government to that extent is curtailed and is the legislature, which has spoken in clear words in the statute by enacting certain provisions than those provisions alone should be followed. When a statute lays down that a particular thing should be done in a particular manner, no other manner can be invented and no other course can be adopted to achieve the result. Sub-sec (3) lays down that applications should be processed only through the Registrar of the University. It also lays down several other conditions such as, scrutiny by the Executive Council, local inspection and the results of such inquiry and such proceedings are to be placed before the State Government, as provided by sub-sec (4). The intention of the legislature in enacting sub secs.(3) and (4) seems to be that the State Government is posted with necessary facts after scrutiny made by the Executive Council of the University and it is after such results are forward to the State Government that the State Government is supposed to grant its approval as provided by sub-sec. (4) The wisdom behind the provisions is that the State Government is itself adequately provided with sufficient material, before making any decisions, so as to enable it to consider the grant or refusal of permission. In this connection, we may refer to the judgement and the Supreme Court reported in *Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others*, , which lays down that where statute prescribes procedure for doing a thing it must be done accordingly unless there is any contrary indication. Learned Counsel for the Petitioner also invited our attention to a recent judgement of this Court reported

in Tapti Oil Industries and Another etc. Vs. State of Maharashtra and Others, in connection with the infraction of the right under Art. 14. That judgement is of Full Bench and Head Note B of the report is quite relevant. In this case, Inasmuch as Respondent No. 1 has granted approval to Respondents Nos. 3, 4, and 5, the petitioner cannot have that grievance that their approval may be cancelled or rejected. But the Petitioner can certainly rely in this objective circumstances to show that if approvals were granted to Respondents Nos.3, 4 and 5 without even following the provisions of the Statute and without even complying with certain requirements, to which we are not referring at present, the petitioner is right in contending that he was also similarly situated. He had applied to the State Government earlier, that is in March, 1982, while Respondents Nos.3, 4 and 5 have admittedly approached the State Government subsequently. Respondent No.4 approached the Government on 22nd April, 1983, and Respondent No.5 approached somewhere in December 1983, which shows that all the applications of Respondents Nos. 3, 4 and 5 were subsequent when actually the petitioner's application was pending with the University and proposals were also perhaps pending with the Government.

14. The grant of approval of Respondents Nos. 3,4 and 5 is not only amazing but certainly gives a sufficient cause for the grievances to the petitioner that he has been denied the protection under Art.14 of the Constitution. We are satisfied that this grievance is justified in the circumstances of the case and on this short point alone, the Petitioner is likely to succeed. Article 14 clearly guarantees protection against all kinds of arbitrariness. In this case, there are three obvious and apparent grounds on which the action of Respondents No.1 can be said to be quite arbitrary and unjustified in the face of the provisions of S.43 of the Act. The first ground is that there was no authority in respondent No.1 to entertain any application contrary to S.43 of the Act. Secondly, if Respondent No.1 was favorable to Respondents No. 3,4 and 5, the same favor could have been extended to the petitioner, whose application was already pending. Thirdly, Respondent No.1 has gone to such an extent that it appears that Respondent No.1 has acted with a little special interest in regard to the approval granted to Respondents Nos.3,4 and 5. The letter, Exhibit "E", written to the Registrar of the University is on the record of this Court and para 3 of this letter, to which our attention was invited by learned Counsel for the Petitioner, is very eloquent. We are pointing out this only to show as to how the statutory provisions are not only ignored but an attempt is made to see that the statute should be followed in a particular way. Paragraph 3 of this letter states:-

"Since the academic year 1983-84 is shortly to be commenced, it is requested to University, that the Vice-Chancellor may take early action under S.11(4) conferred on V.C. and the college be allowed to start the classes from 1983-84. After that, Local enquiry Committee, Academic Council, Executive Council and Senate's report may be sent to Govt. and after such receipt of report, Govt. under Ss.43(6) and (7) have no objection to order final application which may be taken for granted."

We are quoting the extract of this letter only to show as to how the Government could grant such anticipatory final sanction in view of the clear provisions of sub-s.(6) and (7) of S.43 of the Act. Sub-sec.(4) prescribes that the Executive Council shall scrutinise the order of priority of the applications received and forward the results to the State Government for approval. This sub-section again enjoins that the University authorities i.e. the Executive Council , has to determine the order of priority of the applications received. We want to make it clear that in this case reference to the applications and priority has a special significance in that, it refers to applications received in accordance with sub-s.(3) of S.43. If that interpretation is correct, we have no doubt in our mind that the application of the Petitioner was the first in order and he must get the highest priority in considering the approval in view of specific provisions of sub-s.(4). If we look at the provisions of sub-secs. (6) and (7), which we have quoted above, it can be said that the approval, which is granted under sub-sec.(4) may be said to be a preliminary approval and the approval which is granted in accordance with sub-secs.(6) and (7) may be termed as a final approval of the Government. According to the scheme of the said section, it appears that at both stages, an intensive inquiry is prescribed by the concerned authorities. Even a local inquiry is provided in cl.(a) of sub-sec.(5) in regard to matters stated in sub-sec.(3). Clause (c) of sub-sec. (5) provides for consultation with the Academic Council after consideration of result of the inquiry made under cl. (a) of sub-sec. (5). Thus, the application having been processed and inquiry having been made by competent persons and the results of such authoritative inquiry having been considered and after consultation with the Executive and Academic Council having been made, the Registrar is supposed to place all the proceedings before the Senate, which after considering these inquiries and their results, and making further inquiry if necessary, has to pass a resolution in this respect and thereafter, the proposal along with all proceedings, is to be sent to the State Government for deciding whether the approval is to be granted, either in whole or in part. The whole crux of the said S.43 appears to be that the State Government is posted not only with the result of the inquiry but is also posted with the result of the consultation made with the Academic Council and Executive Council and all proceedings following the application, which is processed in the University in accordance with the provisions of sub-sec.(3) cls. (a) to (g). The intention of the legislature seems to be that the State Government , being a sovereign authority, is to be posted with all detailed facts in regard to the application submitted for affiliation of the college and it is only after such results of inquiry and scrutiny and all proceedings which are submitted to the State Government, that it is vested with the power to grant or reject the approval as provided by sub-secs. (6) and (7). The legislature has also provided that the grant of approval may be subject to certain terms and conditions. The conditions are that the approval may specify the courses of instruction in respect of the colleges affiliated. It may also specify the number of students to be admitted and it also states that the approval may be rejected, partly, or it may be approval may be rejected, partly, or it may be granted wholly. The legislature further

provides that if the approval is rejected, the rejection shall state the grounds.

15. With this clear mandate of the legislature as given in sub-secs. (6) and (7), which are to be read in conjunction with sub-sec.(4), it is difficult to appreciate the refusal given by the State Government by its letter dated 15th July 1983 to the present Petitioner. The letter of the Government is at Ext. R-1, it being in Marathi, accompanying the return. This letter may be reproduced. Although sub-sec.(4) does not require to give any grounds, we assume that the intention of the legislature is that whenever the Government wants to reject, it should state its grounds. In this letter, what is stated is as follows:-

This letter is addressed to the Secretary of Deogiri Shikshan Prasarak Mandal, that is, the Petitioner. The English translation of the said letter may be read as follows:-

"In connection with your letter dated 27-6-1983 on the above subject, I am directed to state to you that the Government has not approved the application of Deogiri Shikshan Prasarak Mandal for starting a college of Arts and Commerce at Parbhani and, therefore, this Sanstha cannot be given permission to start the college."

This reply does not contain any ground. An attempt has been made now by the Government in the return, which we have quoted above, to supplement this ground and that ground is mentioned and recited by us above, with fear of repetition, we only recite that ground which states that as the approval has been granted to open college to the Respondent No.3 at Jintur, Respondent NO.4 at Parbhani and Respondent No.5 at Purna, the Government thought that if approval would be granted to open additional college at Parbhani, there would be unhealthy competition due to inadequate strength of students even in existing college. In our opinion, this ground is only an afterthought and it is too flimsy to merit any serious consideration. If this ground was really present it should have been automatically mentioned in the letter which was sent on 15th July 1983 itself.

16. Then in the absence of any other challenge and material placed before us, it is not possible for us to say that the grant of permission will result in any serious consequences as are suggested in the return, that is, having some unhealthy competition due to inadequate number of students. There are provisions of S.43 which sufficiently protect and safeguard these contingencies. The Executive Council, Academic Council and the Marathwada University has itself been made competent to go through all these inadequacies and this section itself is quite clear that any college, which is opened and needs affiliation or recognition, is under an obligation to fulfil certain requirements, which are provided in cls. (a) to (g) of sub-sec.(3). We do not want to burden this judgment with the detailed narration of those requirements. We want only to make a reference to them, which clearly shows that several circumstances have been mentioned by which Executive Council is authorised to inspect the colleges, to compel them to fulfil

certain requirements in regard to number of students, in regard to the accommodation of the students, in regard to the facilities of the hostels and in regard to several other educational matters, which are enumerated in S.43 itself. In our opinion, the provisions of S.43 are quite clear and exhaustive as far as applications for affiliation and recognition are concerned. These provisions have been detailed in a clear language and they have been totally overlooked in this matter and to that extent, the action of the Government suffers from illegality and this illegality itself is sufficient to give cause of action to claim, as of right, approval for the college by the Petitioner which is pending before the State Governments.

17. We may also indicate that although we are not dealing with the validity of the approvals granted to Respondents Nos.3,4 and 5 and the Petitioner has also not shown any interest in seriously challenging the validity of these permissions, we must observe that it would have been better on the part of the Government to have observed the provisions of the Act as it is. By observance of the legislative command only the rule of law can be put into practice and can form part of true legal order.

In this case, it has come to our notice that S.43 has not been observed at all, and according to us, it is a case of a little concern in the sense that the action of the Government is, therefore, not only unwarranted in law, but is also quite arbitrary and unjust. We may mention that in such matters the administrative agency is also bound by the rules, when they make decisions, they ought not to be made on the basis of personal whims or opinions but according to principle of formal equality. Arbitrariness and injustice should be prevented.

18. In the result, the petition is allowed. We direct that the Government will consider the application of the Petitioner favorably and accord approval to the Petitioner in accordance with law and as provided by S.43 of the Marathwada University Act. As the approval will be now for the year 1984, the Petitioner's request for 1983 cannot be granted. Subject to other conditions being fulfilled, the Petitioner will be entitled to get permission from the State Government as provided by sub-sec.(4) of S.43 of the Act. The other provisions, which are to be followed, will still be available for the State to follow. Subject to the conditions laid down in sub-secs.(6) and (7) of S.43 of the Act, the Petitioner will get approval from the State Govt. In our opinion, the present application is restricted only to the provisions of sub-sec.(4) of S.43. We hope that the Government will certainly consider in a charitable way the case of the Petitioner and will not deny equal protection of laws to him as he is also equally a Citizen of the State, who deserves the same protection at the hands of the Government which other Respondents i.e. Respondents Nos. 3,4 and 5 have received in this case. Letter dated 15th July 1983 of the First Respondent is hereby quashed. Mandamus be issued to the State Government to accord approval to the Petitioner to start new college of Arts and Commerce at Parbhani. Rule made absolute. No order as to the costs. Petitions allowed.