

(2000) 08 BOM CK 0011
In the Bombay High Court
Case No : W. P. No. 3260 of 2000

Shikshan Samiti, Gadhinglaj

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 07-08-2000

Acts Referred:

Constitution of India, 1950 — Article 14

Maharashtra Universities Act, 1994 — Section 82, 82(3), 82(4), 82(5)

Citation : (2000) 08 BOM CK 0011

Hon'ble Judges : Vijay Daga, J;A.P. Shah, J

Bench : Division Bench

Advocate : V.M. Thorat, for the Appellant; S.K. Shinde, A.G.P. for Respondent No. 1, R.G. Ketkar for Respondent No. 2, S.M. Gorwadkar for Respondent No. 3 and A.S. Desai, for the Respondent

Judgement

Vijay Daga, J.—We have heard the Learned Counsel for the parties. Rule returnable forthwith. Respondents waive service. By consent petition is taken up for hearing.

2. The petition is directed against the order passed by respondent No. 1 permitting respondent No. 4 college to shift from Kanadewadi to Nesri, Taluka Gadhinglaj, District Kolhapur.

3. The brief facts giving rise to the present petition are as under :

The petitioner is a society registered under the Societies Registration Act and running Secondary and Higher Secondary School as also the junior and senior college at village Nesri, Taluka Gadhinglaj, District Kolhapur. The respondent No. 1 is the State of Maharashtra, the ultimate authority to grant permission for opening new colleges. The respondent No. 2 is, Shivaji University to which the colleges run by the petitioner and respondent No. 3 are affiliated. The respondent No. 3, somewhere in 1988, established respondent No. 4 college with permission of respondent No. 1 under the name and style Raja Shiv Chhatrapati

College of Arts and Commerce at Kanadewadi, Taluka Gadhinglaj, District Kolhapur. The respondents Nos. 3 and 4 finding it difficult to get sufficient strength of students in the Commerce faculty decided to shift their college from Kanadewadi to Nesri where the petitioner society is already running its college of Arts and Commerce.

4. It is stated that respondent No. 3 society approached respondent No. 2 - Shivaji University for permission to shift the said respondent No. 4 college from Kanadewadi to Nesri, however, the respondent No. 2 University, after careful scrutiny and after considering various factors including the students available in that area, refused to accord its permission. The Director of Technical Education was also of the opinion that if respondent No. 4 college is allowed to be shifted from Kanadewadi to Nesri, it would adversely affect the strength of existing college run by the petitioner society. The reports of respondent No. 2 University as well as of the Director of Technical Education came to be forwarded to the State Government. In spite of the adverse reports from all the corners, the State Government, ignoring all the recommendations, granted permission to shift respondent No. 4 college.

5. In order to find out compelling circumstances under which the State Government was pleased to grant permission to shift the college, all the relevant files were directed to be produced before us. After having gone through the original record of the State Government produced before us, we have also examined negative notings made on the said proposal of respondent No. 3 society by almost all the authorities to the effect that no permission for transfer should be granted. However, it appears from the noting made on the file that the Minister for Education, ignoring all the relevant negative opinions of all the relevant authorities, has granted permission for shifting respondent No. 4 college without recording any reasons therefore. The endorsement made by the Chief Secretary and the Minister of Education are being reproduced hereinbelow which are sufficient to demonstrate as to how the State Government, ignoring all the relevant considerations, has dealt with the issue relating to the grant of permission. The endorsement made by the Chief Secretary to the State of Maharashtra reads as under:-

While the endorsement made by the Minister of Education reads as under :-

Mere look at the above endorsement exhibits arbitrary approach on the part of the Minister of Education, who records no reasons for accepting the request for transfer of respondent No. 4 college and overrules the negative opinion given by the Chief Secretary of the State. The aforesaid endorsement needs to be examined in the light of the allegations made by the petitioner in the petition.

6. The petitioner society has made a specific allegation that the trustees of the petitioner society made enquiry with respondent No. 2 University and also with the local Education Officer in the matter of transfer of respondent No. 4 college. Both the authorities preferred to remain tight-lipped. The trustees of the

petitioner society, therefore, came down to Mumbai and met various officers in Mantralaya and after hectic enquiry they came to know that the permission for shifting of respondent No. 4 college was granted by the Minister of Education. The petitioner submitted that they tried to obtain copy of the order passed by the Education Minister permitting respondent No. 3 to shift respondent No. 4 college to Nesri. However, no such copy of the order was made available to the petitioner. Thus, the permission granted by respondent No. 1 for shifting respondent No. 4 college to Nesri in clandestine manner is a subject matter of challenge in this petition on the ground of malice in law and that the same has been passed in colorful exercise of powers and is in the breach of principles of natural justice for want of reasons.

7. The petitioner submits that in view of the law laid down by this Court in *Shri Dhananjay R. Kulkarni and others Vs. State of Maharashtra and others*, , the application for grant of permission to shift college has to be examined and considered by the University, to which the college is affiliated, in the light of provision of section 82 of the Maharashtra Universities Act ("Act" for short). It clearly stipulates that the application filed by the management for opening a new college or institution of higher learning, not in conformity with the Perspective Plan, cannot be granted by the University. All the applications filed by the managements within the period stipulated by section 82(3) seeking permission to open new colleges or institutions of higher learning are required to be scrutinised by the Board of College and University Development as required by section 82(4) and are required to be forwarded to the State Government with the approval of the Management Council with such recommendations as are deemed appropriate by the Management Council. The State Government, out of the applications recommended by the University, may grant permission to such institutions as it may consider right and proper in its absolute discretion, as stipulated in section 82(5) of the Act. Thus, u/s 82(5), the State Government has wide discretion even to decline permission to such institutions, the applications of which, have been recommended by the University. Under the proviso to sub-section (5) of section 82, the State Government has power to grant approval for starting new college or institution of higher learning, even though the University may not have recommended the grant of such approval. But such power vested in the State Government can only be exercised in exceptional cases for the reasons to be recorded in writing. The said proviso is applicable only to such applications which were considered but not recommended by the University. Only in such cases the State Government has overriding power to grant approval, that too in exceptional cases for the reasons to be recorded in writing. It may also be possible that when such applications are not considered by the University and forwarded to the State Government with negative recommendations, the State Government may find that the University was wrong in not considering the applications on the ground that the same are not in conformity with the Perspective Plan and, in those circumstances, it may require University to consider such applications. In such circumstances, it is obligatory on the part of

the State Government to record reasons for taking view other than the view taken by the University. The State Government has to justify as to why the recommendations of the University are overruled. This power given to the State is to be exercised in exceptional cases. If the order of the State Government granting permission to shift respondent No. 4 college from Kanadewadi to Nesri is examined in the above backdrop, it would be clear that no reasons are recorded by the Minister of Education for granting permission. We, therefore, hold that the order passed by the State Government is arbitrary for want of reasons and thus violative of principles of natural justice, which are part of Article 14 of the Constitution of India.

8. The petitioner society had a reasonable expectation of likely to be affected by a prejudicial decision taken by the State Government and had a right of being heard. It is needless to mention that the power to determine questions affecting the rights of the persons imposes limitation that the power should be exercised in conformity with the principles of natural justice. It was, thus, obligatory on the part of the State Government to hear the petitioner before taking decision to grant permission to shift respondent No. 4 college. The impugned action and/or order, therefore, is clearly in violation of the principles of natural justice and the same deserves to be quashed on this count also.

9. The aforesaid action of respondent State is also challenged on the ground of malice in fact as the same has been passed by the Minister of Education under the pressure of Shri Babasaheb Kupekar, who is a Chairman of respondent No. 3 society as also the Minister for Co-operation, State of Maharashtra. However, we do not propose to entertain this challenge in view of the fact that neither Shri Babasaheb Kupekar nor the Minister of Education has been made a party to the petition against whom the allegations of mala fides are made.

10. In the aforesaid facts and circumstances of the case and for the reasons stated hereinabove, we quash and set aside the impugned order permitting respondent No. 3 to shift respondent No. 4 college from Kanadewadi to Nesri only on short ground that the said order was passed in breach of principles of natural justice. Thus, the same is arbitrary and has been passed under colourable exercise of powers without application of mind to the facts and circumstances of the case.

Rule is made absolute in the above terms with no order as to costs.