

SUPREME COURT OF INDIA

Chintamani Shikshan Prasarak Mandal

Vs.

State of Maharashtra

C.A.No.3346 of 2002

(B.N. Agrawal and G.S. Singhvi JJ.)

26.03.2009

ORDER

1. Heard learned counsel for the parties.
2. This is an appeal for setting aside the order of the Division Bench of Bombay High Court whereby permission granted by the State Government to the appellant for starting new college at Ghugus, District Chandrapur was declared illegal and quashed.
3. The appellant submitted an application dated 21.10.1998 to Nagpur University, Nagpur [for short "the University"] for grant of permission to start an Arts and Commerce College at Ghugus. Respondent no.3 also made similar application on 29.10.1998. The University forwarded both the applications to the State Government though recommendation was made only in favour of respondent no.3. In July 1999, a Committee comprising of the then Chief Minister, Deputy Chief Minister and Education Minister considered various applications filed for grant of permission to set up colleges at various places in the State. For Ghugus, the Committee decided to grant permission to the appellant for starting the college from academic year 1999-2000. Thereafter, the appellant established the college and admitted students for the academic year 1999-2000.
4. Respondent no.3 filed Writ Petition No. 4420/1999 for quashing the decision of the State Government. He pleaded that there did not exist any extra-ordinary reason which could justify the State Government's action to allow the appellant herein to establish college ignoring the fact that the University had not recommended its case. In the counter-affidavit it was claimed that the provisions of Section 82 of the *Maharashtra Universities Act, 1994* [in short, "the Act"] are not attracted in the case because the University had not prepared perspective plan as per the requirement of sub-section (1) of Section 82. It was then pleaded that the State Government could, in exercise of its discretionary power under the proviso to sub- section (5) of Section 82, grant permission to the appellant.
5. The High Court, after noticing the factual matrix of the case, held that without recording specific reasons for doing so, the State Government could not have granted permission to

respondent no.1 (appellant herein) by exercising its discretionary power under proviso to sub-section (5) of Section 82 of the Act despite the fact that its case had not been recommended by the University.

6. While issuing notice of the special leave petition filed by the appellant, which was, later on converted into this appeal, the Court directed that there shall be stay in the meantime and by virtue of that order, the college established by the appellant has been functioning for last almost ten years.

7. At the hearing, learned counsel for the appellant brought to the Court's notice that in terms of Section 82(1) of the Act, the University has prepared perspective plan which envisages establishment of six colleges in Chandrapur District for the academic years 2008-2009 to 2013-2014 and Ghugus is one of the locations where college is to be established. Learned counsel for the University stated that he is not in a position to controvert the assertions of the appellant's counsel.

8. In view of the afore-mentioned development, we do not consider it necessary to go into the merits of the impugned order, but, at the same time, we are satisfied that it would be just and expedient to set aside the impugned order so that functioning of the college established by the appellant may not be adversely affected.

9. Accordingly, the appeal is allowed, impugned order is set aside and the writ petition filed by respondent no. 3 is dismissed leaving the question of law open to be decided in an appropriate case. No costs.