

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION (FILING) NO.83 OF 2021

1. Vikas Parishad Mandrem,
a Society registered
under the Societies Registration
Act, 1860, having its address
at C/o Mandre College of
Commerce, Economics
& Management, Baba Dev Nagar,
Near Village Panchayat Mandre,
Mandre, Taluka Pedne, Goa,
represented by its Secretary
Shri Narayan J. Naik

2. Mandrem College of Commerce,
Economics And Management,
Baba Dev Nagar, Near Village
Panchayat Mandre, Mandre,
Taluka Pedne, Goa, through
the Chairman of the
Managing Committee,
Adv. Ramakant D. Khalap

Versus

1. State of Goa
through the Chief Secretary,
having office at Secretariat,
Porvorim, Goa.

2. The Director,
Directorate of Higher Education,
Government of Goa,
Porvorim, Goa.
3. The Secretary,
Higher Education,
Government of Goa,
having office at
Secretariat, Porvorim, Goa.
4. Goa University,
Taleigao Plateau,
Goa-403206

... Respondents.

Mr. Parag Rao with Ms. M. Naik, Advocates for the Petitioners.

Mr. Devidas J. Pangam, Advocate General with Mr. P. Arolkar,
Additional Government Advocate for the Respondents No.1 to 3.

Ms. A. A. Agni, Senior Advocate with Ms. Jay Sawaikar, Advocate
for the Respondent No.4.

**Coram :- M. S. SONAK &
BHARATI H. DANGRE, JJ.**

**Reserved on: 13.01.2021
Pronounced on: 16.02.2021**

JUDGMENT:(Per BHARATI H. DANGRE, J.)

1. Rule. Rule made returnable forthwith. Heard finally

with the consent of the learned counsel for the parties.

2. Alleging belligerent and discriminatory treatment afforded to the Petitioners in not admitting the petitioner no.2, the College run by petitioner no.1-grant-in-aid and further alleging that the said denial is on flimsy and partisan grounds, the petitioners have invoked the writ jurisdiction of this Court seeking relief of quashing and setting aside the said action of the State Government and writ in the nature of a mandamus directing the respondents to grant aid to the petitioners w.e.f. academic session 2013-14.

3. The petitioner no. 1 is an educational society registered under the relevant provisions of the Society Registration Act, 1860 and claim to be a pioneer in the educational field in the State, having started the secondary school education in the year 1978 and a higher secondary section from the year 1990. Since the students in the adjoining area were finding it difficult to enrol themselves in the primary section in the school which were located at a distance, a primary section came to be added in the year 1995. The petitioner no.1-Society aim to make education easily accessible and available to the children of Mandrem and nearby villages. At the three levels the Petitioner is presently providing education and is in receipt of grant-in-aid from the very inception when steps were taken to initialise the

distinct levels of education.

4. The grievance of the petitioners pertain to the refusal of the respondent to provide aid, when the petitioner no.1 intended to further extend their horizon to provide education at graduation level. Considering the fact based scenario, in absence of any government or private college providing degree education in Mandrem in the year 2012 and the only college available being the Government College at Pernem, located at a distance of about 23 kms from the college of the petitioners and since the said college was assessed to be beyond the reach of the students who were aspirant of prosecuting their graduation studies and residing at Morjim, Palyen, Keri and Terecol locality at a distance of 26kms, 28kms, 30kms and 35kms respectively, the petitioner no.1 applied for affiliation to the Goa University to start degree college in the stream of Arts, B.Com, BBA and Vocational course on 26.09.2011. The need is further intensified, as per the Petitioners since the Government College at Pernem is not directly accessible along the National Highway 17 and is located in Village Vernoda on the outskirts of the Pernem Municipal area and the students of Mandrem and the nearby villages were required to follow the arduous route by changing 2 buses to reach college.

5. The case of the petitioner no.1 is that within the radius of 10 kms from the college at Mandrem there are 3 institutions which are imparting higher secondary education, namely, Harmal Panchakroshi Higher Secondary School at Harmal, Kamleshwar Higher Secondary School at Korgao and St. Xavier Higher Secondary School at Siolim, apart from the petitioner no.1's own institution being Sapteshwar Higher Secondary School at Mandrem. As per the data collated by the Petitioner no.1, about 480 students become eligible to pursue their graduation every academic year. Juxtaposed against the existing scenario of only one Government college at Vernoda, which cater to the education of students passing higher secondary education from Government Higher Secondary School at Pernem, Colvale and Nagzar which has a capacity of 120 students clearing HSSC Exam, the college in Vernoda is their first choice being the closest college. However, in light of the limited 120 seats available in Government College at Pernem for B.Com Degree course, as per the petitioner 480 students from 4 places mentioned above who passed their higher secondary education are unable to access the degree education in Mandrem or in Pernem taluka. Considering the acute need of the students in Mandrem and the adjoining area, the petitioner took up the initiative of providing quality education in the College run by it in Commerce stream.

6. On the application of Petitioner no.1, the Respondent no.2, Director of Higher Education granted approval/NOC on 14.03.2012 to start the BBA course on self finance basis. On 17.07.2012 approval came to be granted for the B.Com course on grant-in-aid basis. This approval was however made subject to the concurrence of the Finance Department of Goa Government. The Goa University also granted it affiliation to the petitioner no.2-college on 17.07.2012 for the B.Com degree course for the academic year 2012-2013. Accordingly, the petitioner no.2 started B.Com course from 17.07.2012 and it is the case of the petitioner that the affiliation came to be extended from time-to-time by Goa University upto the year 2015-2016.

Out of blue, the Respondent no.2, on 21.06.2013 informed the petitioner that the administrative approval for starting of B.Com graduation course which was granted by earlier letter dated 17.07.2012 stand withdrawn as the Finance Department did not agree with the proposal. In the wake of this communication, the Goa University also sought to withdraw its affiliation for the academic year 2016-2017 and this constrained the petitioner to approach this Court by invoking its writ jurisdiction praying for quashing and setting aside of the communication dated 08.06.2016 issued by the Goa University as well as for quashing of the communication dated 21.06.2013 issued by the respondent no.2.

Interim relief was granted in favour of the petitioner and permission was granted to admit the students for the academic year 2016-2017. The proceedings culminated into a detailed judgment and order passed by the High Court on 04.04.2017, where the impugned communications were quashed and set aside. Liberty was given to the respondent no.2 and the Under Secretary (Home) to afford an opportunity of hearing to the petitioner before taking any decision on withdrawal of approval.

7. The grievance as raised in the petition is to the effect that concurrently, when the proposal of the Petitioners was rejected, certain other Societies, which enjoyed the political patronage were permitted to start the college/curriculum, proposed by them irrespective of the fact that another college which was running the same course was located at a short distance. The petitioners have placed on record the notings which are obtained under the Right To Information Act, to assail decision taken in the case of the Petitioner no. 1 and also in case of other institutions and the Petitioners allege nepotism and a partisan approach at the instance of the State functionary to negate the claim of the Petitioner no.1.

8. The petition proceeds to state that instead of abiding by the directions issued by this Court in the Writ Petition, being

affording opportunity of hearing to the petitioner, a show cause notice came to be issued to the petitioner on 05.07.2017 in the backdrop of the comments offered by the Finance Department (Exp.) Department on the proposal to sanction grant to the college of petitioner no.1 and to which the petitioner responded in writing . Personal hearing was also held by the respondent no.2 but in the ultimatum, a decision was arrived at, which was communicated to the petitioner no.1 on 02.07.2018 wherein the approval to start B.Com course in the petitioner no.2-institution was maintained but the same was subject to a stipulation that petitioners will run the B.Com programme/degree course on self finance basis, thereby rejecting the request for grant-in-aid. It is this communication which is assailed by the petitioners in the present writ petition.

9. In support of the petition we have heard the learned counsel Mr. Parag Rao with Ms. M. Naik. Mr. Rao would lay emphasis on the notings which in detail deal with the request of the petitioner no.1 for grant-in-aid for running the B.Com curriculum in the petitioner no.2-institution. He would submit that once the administrative approval has been granted in favour of the Vikas Parishad Mandrem, for starting college in Commerce with one Division of B.Com having maximum strength of 60 students from the academic year 2012-2013 on grant-in-aid basis, it was not

permissible for the Finance Department to retract the same on the pretext of assessing the merits of the case, i.e. that the distance of Government College at Pernem which also offer Commerce programme and that there are 3 other colleges offering the same programme. According to the learned counsel, the Finance Department has overturned the decision of the Higher Education Department, which had assessed the need of having a Commerce college in Mandrem and wrongly concluded that the permission can be granted only on self finance basis. Mr. Rao is extremely critical of the said approach and vehemently submit that the whole attempt was actuated with political reason and ulterior motive and the respondent was guided by the political lobby in denying the request of the petitioner. According to Mr. Rao a hostile discrimination and high handedness of the political powers is very apparent from the manner in which the case of the petitioner no.1 has been processed, when the petitioner no.1 have expended a sum of ₹2,31,10,086.00 and has already started the B.Com degree course from the academic session 2012 itself with the affiliation granted by the respondent no.4-University which was extended upto to 2015-2016. Mr. Rao would contend that the approach of the respondent authority to deny the grant-in-aid is a case of deep rooted aversion and hostility shown towards their political opponent, i.e. Chairman of the petitioner no.1-Society. His submission is that in order to appease

those in power, the Petitioners were to be kept out of the zone of conferment of grant-in-aid from the Government and to deny the said aid, self contradictory stance have been taken; on one occasion informing the petitioner that the strength of the petitioner college is below 100 whereas the noting reflecting the reason of a financial crunch as well as the very need to start a stream of Commerce as proposed at Mandrem in light of the alternative curriculum being available in the nearby vicinity. By factually demonstrating the distance between the college of the petitioner at Mandrem and the other colleges, existence of which has been considered to be a reason for denial of the grant-in-aid in favour of the petitioner, according to Mr. Rao, distance is a mere excuse cited to deny the aid. According to learned counsel for the petitioner, the petitioner is running the college since long and the excellent results speak for itself. Though Mr. Rao admits that grant-in-aid is the discretion of the State Government and he cannot claim it by way of right, he submits that if the position taken by the State is an act of favouritism and nepotism it will violate the soul of equality clause contained in Article 14 of the Constitution and on satisfied with this aspect of arbitrariness in the State action, this Court would spring into action and strike down the same. Mr. Rao relying on a decision of this Court in the case of *Manubhai Pragaji Vashi v/s.*

*State of Maharashtra and others*¹ where the division bench speaking through Justice Lentinn as held as follows:

'22. Paucity of finances which Government pleads can be no reason of discrimination. To that end, it was held by the Supreme Court in Ratlam Municipality vs. Vardhichand, AIR 1980 SC 1622. We are informed that in the Rs.3501 crore budge for the financial year 1986-87, Rs. 791 crores are earmarked for education. If grants are to be given to non-government law colleges, the estimate would be Rs.70 lakhs for a 5 year law course, and even less for a 3 year law course. Any accusation of conjection on our part on this score must stand negated by the fact that both the petitioner and Government's learned counsel Mr. Saldhana are ad idem, that while according to Government, grant-in-aid to private law colleges would come to about Rs. 89 lajhs, even so the requirement would be less than 0.1. per cent of the total budgetary allocation for education. Surely not too high a price for legal education.

23. It is also not without its own significance that if grants are withheld from non-government law colleges, the under-developed areas would equally suffer, because in such areas no new law colleges would be started or would have to close down or impart indifferent legal education for financial constraints. Further, dedicated and experiences professors and staff, difficult as it is to come by, will not be available at all. In a word, education in law would fall by the wayside.'

1 [1989] Mh.L.J. 344

10. In support of the decision of the State Government which hurt the Petitioners, we have heard the learned Advocate General Mr. Devidas J. Pangam, who would submit that the action of the Government in refusing aid to educational institution in the State is not governed by any statute and that the private educational institutions do not have any fundamental or legally enforceable right to claim grant-in-aid from the State. He submit that it is for the State to take a decision as to how it manage its finances and if the State is of the opinion that the grant-in-aid would impose a heavy burden on the State exchequer, it is perfectly justified in refusing the same to the petitioner no.1-Society and in favour of the college run by it. The learned Advocate General rely upon the affidavit sworn by the Under Secretary (Higher Education) in the Directorate of Higher Education who have repelled the contention of the petitioner and proceed to state that since the Finance Department has not accorded its approval to sanction grant-in-aid to the petitioner, on the basis of justifiable reasons, the petitioner cannot allege arbitrariness. The learned Advocate General would urge that the petitioner, pursuant to the judgment delivered by this Court in writ petition no.84 of 2017, was afforded an opportunity of hearing, since the matter was referred to the Finance Department by the respondent no.3 to examine the request of the petitioner and the decision has been arrived at to continue the approval in favour of

the petitioner to impart education in the Commerce stream but without any aid from the State but on self-finance basis. This concession was accorded since the administrative approval for commencing the programme was granted in July 2012 and since then 5 academic years have passed and therefore it was considered to be not expedient to withdraw the permission or NOC granted in favour of the petitioner for the said programme. Mr. Pangam, learned Advocate General would also submit that as far as the BBA course is concerned, on 14.03.2014 itself the petitioner was conveyed the approval of the Government of Goa to start the said curriculum on self-finance basis, without any financial assistance for initial period of 5 years. In spite of the said approval the petitioner did not start the BBA course and now it cannot complain that no approval is granted.

The submission of learned Advocate General is that though the concept of equality is ingrained in the Constitution of India, the said concept would not involve the idea of absolute equality amongst all, which may be a physical impossibility and though Article 14 may guarantee similarity of treatment but it does not ensure identical treatment and mere differentiation or inequality of treatment does not per se amount to discrimination and whenever an action is deemed as violative of Article 14, it is necessary in the first place to ascertain the policy underlying the

statute and the object intended to achieve. Since the grant-in-aid, according to the learned Advocate General, cannot be claimed by way of right, what is to be seen is whether the decision making process of the State is discriminatory or arbitrary and obviously according to him, the case of the petitioner was taken up for consideration, processed through various departments and ultimately a decision is arrived that the petitioner's institute is not entitled for grant-in-aid and the decision is justifiable one as can be seen through the notings placed on record. The learned Advocate General would therefore seek dismissal of the writ petition.

11. With the assistance of the respective counsels we have perused the writ petition, the affidavit filed on behalf of the State as well as by the Registrar of respondent no.4 and the rejoinder filed by the petitioner. The grievance of the petitioner revolves around the decision taken disentitling the petitioner no.2 for grant-in-aid for the B.Com graduation course at Mandrem in the Mandrem College of Commerce, Economics and Management, taluka Pernem, State of Goa. The facts placed on record reveal that an application was made to the respondent no.2 on 26.09.2011 by the petitioner no.1 for opening of college of Arts (BA), Commerce (B.Com) and Bachelor of Business Administration (BBA), Bachelor of Education (B.Ed) and other courses. In the application itself the petitioner

Society charted the course of action by stating that the institution of the petitioner is known for academic excellence and that it has undertaken a new construction for the proposed institution at Mandrem, Goa which also have a facility of playground and stadium for outdoor and indoor sports activities. Pertinent to note that Mandrem is located on the west coast of Goa about 20 kms from Mapusa and it is an urbanized village with connectivity for nearby villages like Morjim, Arambol, Palem, Kerim, Terecol, Siolim, Agarwada, Malewada, etc. The said application was processed and the respondent no.2 granted NOC for 2 streams; BBA Course on self-finance basis and B.Com course having maximum strength of 60 students on grant-in-aid basis subject to the condition of obtaining affiliation from Goa University and concurrence of the Finance Department. This NOC was withdrawn ahead of the next academic session on the ground that the Finance Department has not accorded its approval. The Goa University which had granted its affiliation also retracted the same.

12. The notings placed on record alongwith the petition and exhibited at Annexure-G are relevant, since from the same we can discern the process how the proposal of the petitioner was processed.

The proposal being put by from the Chairman of Vikas

Parishad Mandrem, the Under Secretary(HE) made the following noting:

'The proposal in question is to start a Colleg of Commerce, Arts and Economics at Mandre in Pernem Taluka. There is already a College in Pernem which is fully managed by Government of Goa. If one more College is started in this Taluka it may have an adverse effect on the present college. It is therefore necessary to get a clear information of number of students from Mandre, Harmal, Corgao and Siolim area seeking admission in Govt. College, Pednem. It would also be advisable to get the infromation about number of students passing out Std. XIIth Arts and Commerce from the areas referred to by the Society.'

The necessary data was obtained and the enrollment in Arts and Commerce stream in Government College Pernem in the year 2011-2012 was recorded to be 66 students in Commerce and Arts faculty and it was noted that only in year 2011-12 the enrolment decreased. The consolidated proposal by incorporating the data collected from various colleges was directed to be put up. The Government College Pernem which was recorded to be the only institution catering the needs of students passing out Std. XII from Pernem taluka was found to be located on NH17 at Virnoda and the strength of the college for last 3 years was noted to be between 270-350 for last 3 years. The noting record as under:

'If we permit the Vikas Parishad Mandrem to start

College on full grant-in-aid basis as desired by them, the Government College Pernem will lose its strength drastically by about 50% in which case it would be totally unviable. Therefore, the request of Vikas Parishad Pernem of Commerce and Arts cannot be entertained.'

The noting dated 29.05.2012 put up by the Director of Higher Education project an additional financial liability of around Rs.2.5crores per annum and therefore it was advised that the concurrence of the Finance Department should be obtained. On 06.06.2012 the office of the Hon'ble Chief Minister recorded the following remark:

'(1) The physical location of the feeder Higher Secondary schools from this proposed College and existing college was studied on the map. It appears that proposed college will be more accessible to the students of the area. Creation of a new option would always be a better alternative, otherwise for the want of a choice, the students will have to contend with the only institution which has monopolistic sway in the area.

(2) However, since grant-in-aid for the proposed College at Mandre, it would be in fitness of things that complementary course, which are not taught in Government College Pernem. This would justify the additional expenditure in form of grants-in-aid.

(3) May kindly decide regarding 'A' above.'

Upon the said noting, the then Hon'ble Chief Minister

noted on 03.06.2012:

'We should not take case to case decision. Let DIR(HE) chart out th details of various colleges, students enrolled during past five years, Higher secondaries, students passing out as also other relevant data.

Based on data above requirements and availability of potential employment sources we may take a decision on the line of colleges to be permitted. May do the exercise before month end.'

The notings reflect that the Director (Higher Education) was directed to chart out the details of various colleges, students enrolled during the past 5 years, higher secondary students passing out and also relevant data and decision was to be taken on the said data being collated. The information was also sought from the institution situated in Mapusa, Siolim, Pernem and Porvorim as well as the Government College Pernem, Bandodkar College-Mapusa, St. Xavier's College Mapusa and Saraswat College, Mapusa. The manner in which data was to be collated was also set out. The Under Secretary (HE) rightly put up a note in the following words:

'As regards the 'need' for establishing new colleges we have to work out a proper plan for next ten years for which a thorough analysis of intake capacity vis-vis available infrastructure, existing gaps and Talukawise mapping of colleges has to be done. We will have also

to take into consideration the availability of funds and Govt's policy towards establishment of new institutions of higher education on grant-in-aid basis.

As regards present position with reference to establishment of new College of Commerce at Mandre, there are altogether 91 students who have passed out XIIth from Pernem during current year. The Govt. College Pernem have already admitted 66 students. The Govt. may like to take decision in the matter.'

The file was called by the Hon'ble Chief Minister and a list of students who sought admission in Government College Pernem during session of 2011-12 and 2012-13 was placed before him. It is informed that 21 students from the area of proposed Mandrem College during 2011-12 and 27 students during 2012-13 have sought admission in Government College Pernem. It was also informed that during current year 88 students have passed out from 2 HSC and 20 joined Government College Pernem and 68 might have joined colleges in Mapusa.

On the said note being put up on 16.07.2012, the following noting is made:

'There are 5 higher secondary schools in the area. From these 5 schools 230 Commerce students cleared Class XII board examination. Only College serving the area is Govt. College Pernem. Some students (approximately 111 in number) approach Mapusa

College for admission. The capacity of Govt. College Pernem in the Commerce stream is 60. Therefore, there is still an unfilled demand of 60 in B.Com course. Considering this fact, we may grant NOC to proposed Mandre College. The application may seek affiliation from University of Goa. May kindly approve.'

The Hon'ble Chief Minister has thereafter endorsed to the following effect:

'We may grant approval for Commerce College only.'

13. In the light of the said noting, administrative approval was granted to the petitioner college with one division of B.Com for maximum strength of 60 students from academic year 2012-2013 on grant-in-aid basis. Since it involved financial implication of 2.5crores it was put up before the Finance Department for its concurrence. The estimate of the financial implication was based on the requirements of non-teaching and teaching posts. Pertinent to note that while granting administrative approval, it was recorded that the college has to follow the procedure laid down under the Pattern of Assistance issued vide Office Order dated 30.11.2001 as per which the financial liability for the first year has to be borne by the College and, as such there would be no financial liability towards grant-in-aid for the first year. For the next 2 years, i.e.

academic year 2013-2014 and 2014-2015, the salary of the staff as well as the maintenance grants was worked out as Rs.250 lakhs for 2 years. The file then moved to Finance (Exp.) Department. The Finance Department had before it the financial repercussions and the liability and also the noting that the college has to follow the pattern of assistance as per the Order dated 30.11.2001. The noting placed by the Finance Department dated 14.08.2012 is reflected as under:-

'In Pernem constituency there is only one college and cannot meet the present demand of students. As such the students have to come to Mapusa for higher studies.

In view of above NOC to start a Division of B.Com be granted to College of Vikas Parishad Mandrem subject to the condition that:

- 1) The Institution may seek affiliation from Goa University.*
- 2) The expenditure is met by the Institution in the first year.*
- 3) maximum students shall not exceed 60 in a class.'*

The Additional Secretary (Finance) (Exp.) examined the aforesaid note and recorded as under:-

'2. It appears that the DHE, has granted approval to commence Bachelor in Commerce Course from A.Y. 2012-13.

3. It is opined that, while granting permission for

opening up new Colleges of Higher Education/Technical Education, due emphasis should be laid down, on ensuring that the proposed institution does not fall in areas covered by other institutions, thereby creating deficiency in enrollment for already established institution. Besides, common courses and curriculum should be avoided and care should be taken that such a decision to provide GIA and permission of such courses, does not encourage others who have been granted approval for opening colleges, conducting courses on self financing basis, to seek Government grant.

4. In this case, it is observed that our Government College, Pernem is within 07 kms of the said institution and also offers Commerce programme. There are 03 colleges in Mapusa, offering Commerce programme. Thus it would not be appropriate to grant approval to this Institution, without carrying out a proper need based assessment and educational mapping.

5. If, Government desires to grant approval, than the permission should be under self-financing scheme only. Providing GIA to such Institution would add to the liabilities of the DHE/Government, as it appears that there would not be any fruitful yield, for same type of programmes in 04 other colleges, in nearby vicinity of 15 to 20 kms. Ultimately the existing Institutions would have lessor strengths and students would be affected by declining quality standards.'

14. This received concurrence of the Principal Secretary,

Finance Department as well as the Hon'ble Chief Minister on 23/05/2013. Based on this submission the petitioner no.2 on 21.06.2013 was informed that the Finance Department has not agreed with their proposal and therefore the administrative approval was withdrawn.

15. Scrutiny of the notings in detail, discloses that while granting administrative approval to the proposal of the petitioner, the entire data as regards existing colleges was taken into account and it is noted that there is only one college in Pernem constituency which cannot satisfy the demands and students have to travel all along to Mapusa to prosecute their further studies. Pertinent to note that the proposal of the petitioner was examined through various angles, with an indication from the then Hon'ble Chief Minister, that it would be in fitness of things that complementary courses which are not taught in Government College Pernem would justify the additional expenditure in form of grant-in-aid. Recording that the College would be more accessible, the idea was propagated by the State that one more option would be available by way of choice and the monopoly of one college in the area would be done away with. Sitting over the decision on the file moved by the Higher and Technical Education Department, the Finance Department, entered into the merit of the claim and insisted that since the Government

College Pernem is situated within 7 kms of the petitioner institute and which confers Commerce curriculum, besides there are 3 Colleges in Mapusa, approval was refused in absence of a proper need based assessment and educational mapping. This is how the proposal of the petitioner came to be rejected.

16. Since Mr. Rao, has alleged discriminatory treatment qua the petitioner no.1-institution and has placed on record the notings in respect of 3 other colleges which during the very relevant time proposed to start a new college/curriculum and were granted permission, in ignorance of the existing colleges in close proximity, we have perused the notings to that effect placed alongwith the petition. One College to whom NOC has been granted is Vidya Prabhodhini Educational Society, Porvorim, Goa which preferred an application on 17.10.2011 for starting new college of BBA, BCA, Arts and Commerce at Porvorim. After assessing the capacity of the College in form of infrastructure, and on recording the assessment of the need to start a College, it is recorded that there are 2 Arts Colleges within the radius of 10kms from Pernem and there is no need for a new Arts college at Porvorim.

The petitioner is extremely critical of the manner in which the said college has been favoured. Another college which the petitioner make reference is the one run by Swami Vivekanand

Vidhyaprasarak Mandal's College of Commerce at Borim, Ponda which sought permission for starting one division of B.Com with maximum 60 students from academic year 2012-2013 with the concurrence of Finance Department. The petitioner has also placed on record the notings dealing with proposal of Shree Sateri Pissani Education Society, Ponda-Goa for starting the college of Commerce at Usgaon, Dharbandora for the academic year 2013-2014 where the administrative approval was granted on 08.02.2013 with the financial implication of Rs.200 lakhs per annum, the Finance Department simply accorded its No Objection to commence the college in Commerce and BBA subject to the fulfilment of condition by Goa University and availability of space and building, since inspection revealed that the said college did not have building to start college.

17. Relying upon the aforesaid notings in respect of other colleges the petitioner is perfectly justified in contending that in respect of other colleges whose proposals were pending for starting the colleges or a particular stream received concurrence of the Finance Department though for the petitioner the heavy financial liability was cited as a ground for refusing the grant-in-aid. The notings placed on record are reflective of the decision making process of the State Government and in spite of the objection of the

other colleges being located in the vicinity and so also the financial implications, the proposal of Sateri Pissani Education Society as well as the proposal of Vidya Prabhodini where there are 3 colleges within range of 10 kms, the Finance Department proactively conferred the grant-in-aid. As regards the petitioner, at subsequent stage the State Government itself has admitted that the distance between the college of the petitioner at Mandrem and the Government College at Pernem is 17 kms though it is the case of the petitioner that the said distance is 23kms. As far as the grant of permission to the college run by Swami Vivekanand Vidhyaprasarak Mandal's College of Commerce is concerned, in spite of the college being there at Ponda which is at a distance of 7 kms, the permission is granted. It can thus be seen that in respect of these colleges, the need base analysis or financial burden, was completely disregarded.

18. In the case of the petitioner, the administrative approval was granted by taking into consideration the relevant factors including need based factor but the Finance Department overruled it by reasoning that that Government college at Pernem is situated at a distance of 7kms and aid to Petitioner no.2 would incur huge financial burden. In contrast, when we have examined the notings in respect of the other colleges to whom the NOC has been granted

to open new college with the concurrence of the Finance Department, the financial repercussions did not pose a difficulty. Further respondents have permitted additional Divisions in St. Xavier's College in 2017-18 after the petitioner made its college operational at Mandrem, by incurring additional financial burden.

19. From the notings of the finance authorities and the returns filed, it appears that an impression persists that merely because grant-in-aid cannot be claimed by any educational institution as a matter of right, correspondingly there is absolute and unfettered discretion vested in the State to grant or deny grant-in-aid. This is not correct. There is no such absolute and unfettered discretion vested in the State.

20. In the exercise of discretion, the State is bound, inter alia, by principles of reasonableness, good faith, and equality. Relevant considerations have to be taken into account and irrelevant considerations eschewed. The discretion cannot be exercised with an unequal hand or in bad faith. Ultimately, as held by the Hon'ble Supreme Court in *Ramana Dayaram Shetty v/s. International Airport Authority of India & Ors*² even in matters of a grant of largesse, the State cannot act arbitrarily or unreasonably and its

2 (AIR) 79 SC 1628

decision, even in such matters, cannot be premised on whim or caprice.

21. Fortunately, the learned Advocate General, did not subscribe to the position as reflected in the notings and the returns that the State has absolute or unfettered rights in the matter of grant or denial of aid to educational institutions. But the decision-making process, in this case, is vulnerable because the finance authorities, in particular, have proceeded on the basis that absolute and unfettered discretion is vested in the State in such matters.

22. The finance authorities, as the notings suggest, have traveled way beyond the scope assigned to them. They were mainly concerned with financial implications since there was detailed consideration of most of the other aspects at the stage of grant of administrative approval. The finance authorities, for reasons best known, instead of addressing the issue of financial implications, attempted to revisit the detailed exercise undertaken by the administrative/educational authorities. Though it is true, as urged by the learned Advocate General that there cannot be any rigid compartmentalization in such matters, the finance authorities, by ignoring the detailed consideration by the administrative/educational authorities and the data collected and

evaluated by them, were not justified in blocking the proposal for release of grants in terms of the schemes and policies of the Government.

23. The finance authorities were perhaps conscious that the excuse of insufficient funds or excessive financial implications will not hold good, since at and around the same time, the finance authorities were approving the release of grants to at least two to three similarly placed institutions. Some of the approvals granted by the very same finance authorities enabled some of the institutions to receive grants from the very first year when the government scheme provided that the grants for the first year were to be borne by the institutions themselves. Thus, at the relevant time finance was no basis to deny grant. The finance authorities, by ignoring the material favourable to Petitioners on record and by adopting unequal yardsticks, could not have blocked the Petitioners proposal. The decision-making process leading to the denial of the grant to the petitioners is thus vitiated by unreasonableness and the breach of guarantee of equality enshrined in Article 14 of the Constitution of India.

24. True that grant-in-aid cannot be claimed by way of a right but the petitioner has successfully demonstrated before us that

the petitioner was denied the grant-in-aid on the pretext of huge financial liability. This action of the State, justify the argument of Mr. Rao that it violates Article 14 being discriminatory involve negation of equality. The principle underlying equality clause under Article 14 is well settled and right to equality means not only the right to be not discriminated but also ensures protection against any arbitrary or irrational action of the State. Any administrative or executive action which is found to be arbitrary is liable to be struck down. Arbitrary action is the one which is irrational and not based on sound reason and may be the one which is unreasonable. The Constitution Bench in case of *E. P. Royappa vs State Of Tamil Nadu & Anr*³ held as below:

The basic principle which, therefore, informs both Arts. 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any; attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a

3 (1974) 4 SCC 3

republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Article 14. Mala fide exercise of Power and arbitrariness are different lethal radiations emanating from the same vice : in fact the matter comprehends the former. Both are inhibited by Articles 14 and 16.'

25. The rule emanating arbitrary action by Government flows directly from the doctrine of equality embodied under Article 14 and it is now well settled that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that the State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory, it must not be guided by extraneous or irrelevant provision because that would result in denial of equality. When the State Government

exercise any powers, statutory or otherwise it shall not discriminate between two persons and if the exercise of the said power is found to be violative of equality clause, it would be struck down as being arbitrary and capricious. Exercise of such power is antithesis of equality before law. The action of the State Government is hit by Article 14 of both the aspects being discriminatory and also being arbitrary. It is not permissible for the State to act as per its whims and fancies to suit some chosen few, while distributing its largesse and it is expected to act reasonably and fairly while dealing with the grant-in-aid, though discretionary. The claim of the petitioner for grant-in-aid according to us is maintainable only because the petitioner has been able to demonstrate that the preferential treatment has been meted out to others and the said act is discriminatory and demonstrated to be suffering from favouritism and lack reasonableness, fairness and equality. The action of the respondents suffer from the vice of arbitrariness and therefore cannot be sustained. Though there cannot be equality in illegality, we do not find any rules/norms justifying the non-opening of Commerce college by the Petitioners, since the College at Pernem is at 23 kms from the Petitioner no.2.

26. The petitioner who has been denied the grant-in-aid by the impugned communication is running the Commerce stream in

the petitioner no.2 College since the academic session 2012. While rejecting the proposal of the petitioner on 14.07.2014 on the ground that the strength of the college is hardly 100 and in the affidavit the stand of the respondent is that there were only 25 students enrolled with the petitioner in Commerce stream and in 2019-2020 there were only 19 enrolled, we can take judicial note of the fact that it is on account of the non-availability of grant-in-aid to the petitioner no.2 and since it is an era where the pupils and their parents are conscious of admitting their children to institution which have a level of certainty. The decrease in the number of students for the past 3 years cannot be construed to be a ground for declining the grant-in-aid, but for this situation, it is only the State which is to be blamed.

27. The Chairman of the petitioner no. 1 who is present in the Court, through the counsel Mr. Rao fairly conceded to the position that though the grant is due for the said curriculum from the year when administrative approval was granted, but will be satiated if the grant due from the Government is capsized to the last 3 academic years without any interest; since the petitioner no.1 has somehow managed to survive and have catered to the salaries of its Staff and in terms of the orders of this Court the petitioner no.1 has cleared the 50% salary of the Staff when adverse action by the

University was contemplated.

28. Resultantly, we quash and set aside the impugned communications dated 02.07.2018, 03.03.2019 and 29.08.2019 being discriminatory and suffering from arbitrariness. Balancing the equities, we direct that the State Government to release the grant in favour of the petitioner no.1 for running the B.Com curriculum in the petitioner no.2 college from the academic year 2017-2018 and the arrears of the grant are directed to be cleared in 6 equal instalments. However, as far as the grant for current academic year 2020-2021 is concerned, proportional to the number of students admitted and the services of the Staff engaged, the grant would be released within a period of 2 months from today.

With the aforesaid directions, Writ Petition is partly allowed. Easy on costs.

BHARATI H. DANGRE, J.

M. S. SONAK, J