

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5805 OF 2015

Vishal Shkishan Prasarak Mandal
Dhule, Plot No. 63, Gopal Nagar,
Jamnagiri Road, Dhule,
District Dhule, through its
President – Arun s/o Bhila Patil,
Age: 70 Yrs., occu. Social work
R/o Plot No. 63, Gopal Nagar,
Jamnagiri Road, Dhule,
District Dhule.

- PETITIONER

VERSUS

- 1) The State of Maharashtra
Through the Secretary for
Higher and Technical
Education Department,
Mantralaya, Mumbai.
- 2) The Joint Director,
Higher and Technical
Education Department,
Jalgaon Division, Jalgaon.
- 3) The North Maharashtra University
P.B.No. 80, Umavi Nagar,
Jalgaon, District Jalgaon
Through its Registrar

- RESPONDENTS

Mr.VD Hon, Sr.Counsel for Petitioner;
Mr.VJ Dixit, Sr.Counsel for Respondent Nos.1 & 2;
Mr.AB Girase, Advocate For Respondent No.3.

**CORAM : R.M.BORDE &
P.R.BORA, JJ.**

DATE : 12th October, 2015.

ORAL JUDGMENT (PER:-R.M.BORDE, J.)

- 1) Heard. Rule. Rule made returnable

forthwith. With the consent of learned Counsel for the parties, the petition is taken up for final disposal at admission stage.

2) The petitioner is a public trust, duly registered under the provisions of the Maharashtra Public Trusts Act and is also registered as a society, under the Societies Registration Act. The petitioner is praying for issuance of directions to Respondent No. 1 – State Government and its authorities to issue a letter of approval to the petitioner/institution for opening of Arts, Commerce and Science college at Dhule for the academic year 2015-2016 and to permit the petitioner to admit the students in the college. The petitioner contends that North Maharashtra University, Jalgaon has prepared a perspective Plan in accordance with the provisions of Section 82(1) of the Maharashtra Universities Act, 1994, for ensuring equitable distribution of the facilities for Higher Education having due regard to the needs of the unserved and under-developed areas within the jurisdiction of the university.

3) The petitioner submits that after

formulation/preparation of the perspective plan by the university, an application was tendered by the petitioner/institution for opening a new college of Arts, Commerce and Science at Dhule. The perspective plan prepared by the university prescribes two Arts, Commerce and Science Colleges at Dhule proper and in consonance with the perspective plan, according to the petitioner, a proposal was submitted to the university for opening a new college during academic year 2013-2014. The petitioner submits that similar proposals were tendered by the petitioner institution for the academic years 2014-2015 and 2015-2016. Since the proposals were not considered by the State authorities, the petitioner had approached this court by presenting writ petition bearing WP No.6969/2013 and another Writ Petition No.5849/2014, requesting for issuance of directions to the respondent/authorities therein to accord permission in favour of the petitioner institution to open new colleges.

4) An affidavit in reply came to be presented during pendency of writ petition No.6969/2013, wherein it has been stated that the State Government

has already accorded approval for opening a new college in favour of the petitioner/institution; and taking into consideration the aforesaid statement made on behalf of the State Government in the affidavit in reply, Writ Petition No.6969/2013 came to be disposed of by the Division bench of this court on 19th December, 2014. It has been pointed out that in consonance with the decision taken by the State Government, a letter of intent has been issued in favour of the petitioner/institution by the State Government, permitting it to open an Arts, Commerce and Science College during the academic year 2015-2016, subject to fulfillment of certain requirements. The petitioner contends that appropriate steps have been taken for compliance of the requirements laid down in Government Resolution dated 9th September, 2014. In terms of the order issued by the State Government, it is only after the final sanction by the State Government, the petitioner/institution is eligible to secure affiliation from the concerned university. The petitioner makes a grievance that since no further steps were taken in pursuance of the order issued by the State Government, granting the letter of intent, appropriate directions need to be

issued to the Respondent/State and its authorities.

5) The learned Sr. Counsel for the petitioner contends that the petitioner/institution has tendered a proposal for opening Arts, Science and Commerce College at Dhule, within stipulated time frame, as prescribed under Section 82 of the Act. The proposal tendered by the petitioner institution has been duly recommended by the University; and on taking into consideration the recommendations of the University, the State Government has issued the letter of intent on 9th September, 2014. It would be impermissible for the State now to contend that final permission cannot be accorded since the time frame prescribed under Section 82 of the Act has lapsed. It is further contended that the blame in respect of lapsing of the mandatory time frame, prescribed under Section 82 of the Act, shall have attributable to the State Government and the petitioner/institution cannot be put to dis-advantage. It is next contended that the place, where the college is sought to be operated is prescribed under the perspective plan. The proposal tendered by the petitioner institution has been duly recommended by the university as well as the State

Government has also issued the letter of intent for opening the college on 9th September, 2014 and as such, after lapse of few months, the State Government now cannot be permitted to say that, in view of the alleged change in the policy, the request made by the petitioner/institution, cannot be considered.

. The petitioner further contends that the perspective plan, prescribing the location for opening of the new colleges within the jurisdiction of the university shall have to be prepared by the concerned university in accordance with Section 82(1) of the Act of 1994.

. The Government Resolution dated 30th October, 2010 prescribes the modalities in respect of preparation and approval of the perspective plan. Clause 1.2 thereof prescribes that after preparation of perspective plan by the concerned university under Section 82(1) of the Act of 1994, as prescribed under clause 1.1 of the said GR, the perspective plan shall have to be got approved from the State Council of Higher Education. The concerned university shall have also to prepare a plan for every academic year in respect of opening of new colleges. The universities are expected to call for the proposals in respect of

the colleges and the places included in the perspective plan, prepared for the relevant academic year. On receipt of the applications from the institutions, if there are any deficiencies, those are required to be communicated to the concerned applicants/institutions up to 20th November, calling upon the concerned institutions/colleges to comply with the deficiencies up to 30th November of the relevant year. It is also expected of the universities to tender a report along with the applications to Board of College and University Development (for short, B.C.U.D.). An expert committee, appointed by the university, is expected to visit the colleges and conduct inspection up to 15th January and submit its report to the Director, B.C.U.D. through Vice chancellor up to 15th February. The university is not expected to recommend the proposal of such of those institutions, which do not have necessary infrastructure and such institutions shall have to be informed accordingly up to 25th February. In other cases, the university is expected to tender its recommendations to the State Government. The institutions which are held disentitled are provided with an appellate remedy of

tendering an appeal to the Vice chancellor and decision in the appeal is expected by 15th of April of the concerned academic year. The university shall have to tender its recommendations to the State Government up to 1st May of the relevant academic year and the State Government is also mandated to communicate the decision in respect of grant of approval of the proposal up to 15th June of the relevant academic year.

6) The petitioner contends that in observance of the aforesaid time frame, the proposal was scrutinized by the university and the same was forwarded to the State Government and the State Government has also accorded a letter of intent in favour of the petitioner/institution to open a new college for the academic year 2015-2016.

7) The petitioner has placed reliance on the judgment delivered by the Division Bench at principal seat at Mumbai in Writ Petition No.6002/2015 and other companion matters. The petitioners before the principal seat at Mumbai raised an identical grievance as has been raised in the instant petition.

The Division bench of this Court in the judgment in aforesaid matter, has observed in para Nos.12 and 13 as under, -

"12. Government Resolution dated 29 April 2015, as stated to be the policy decision of the State, not to grant permission to open new colleges/division/faculty for the academic year 2015-16, is issued by overlooking the earlier policy decision and the directions issued to prepare perspective plan for academic year 2015-16 in the month of October 2014 and/or even prior to that. The said plan, as noted, is still in existence. Therefore, the prior action to prepare fresh perspective plan by the University for 2015-16 and/or future year 2016-17, in no way, in our view, should have been the reason to deny the proposals, recommended by the University for this year. The affidavit itself shows that the Government intended to have the fresh plan for academic year 2016-17. The whole action is contrary to the scheme of the Act as well as earlier Circular/Government Resolution so issued by the State of preparing perspective plan which have a statutory foundation for the Petitioners and/or such institutions

to send their respective proposals in time. The State's sudden detour is against the existing plan, practice and own directions, apart from the law.

13. The submission that the State has "absolute discretion" referring to Section 82, based upon the stated policy decision, in our view, is unacceptable. The whole action of State, in our view, is arbitrary, unreasonable and is in breach of their own statutory provisions and the Circulars, apart from the breach of the "principles of legitimate expectation" and "the doctrine of promissory estoppel". There was nothing wrong when they issued last year direction/guidelines to prepare the perspective plan as per the still existing statutory provisions. The change in policy, even if any, which is the domain of the State, in the facts and circumstances, ought to have been used and/or utilised prospectively for the year 2016-17 and ought not to have been for the current year 2015-16."

8) The Division Bench at the principal seat at Mumbai had issued directions to the Respondent/State

to consider the applications of the petitioner, as provided under Section 82(5) of the Maharashtra Universities Act, without taking into consideration the Circular dated 29th April, 2015 and 20th July, 2015 in accordance with law. Although the Government Circular dated 29th April, 2015 and 20th July, 2015 are considered to be the Government Resolutions by the Division Bench at principal seat at Mumbai, however, fact remains that it is not a policy decision of the State Government and those are merely the Circulars issued by the State Government. As has been observed by us in the aforesaid paragraphs, the circulars issued by the State is not a policy decision and they will not override the decision of the Government reflected in GR dated 30th October, 2010. In any eventuality, while taking a decision in the matter, Circular dated 29th April, 2015 and 20th July, 2015 being contrary to Government Resolution dated 30th October, 2010, they shall have to be overlooked.

9) An affidavit in reply has been presented by Deputy Secretary, Higher and Technical Education Department, Mantralaya, on behalf of Respondent Nos. 1 and 2, controverting the contentions raised by the

petitioner in the petition. Reliance is placed on the decision taken by the State Government vide its Circular dated 29th April, 2015 whereby the State Government has declared its intention to prepare a new perspective plan for the academic year 2015-2016 onward. The State government has taken a decision not to accord permission to open new colleges during the academic year 2015-2016, since it was noticed that in most of the colleges operated in the State, out of total intake capacity of the colleges, about 25% or more seats were lying vacant. The concerned universities were expected to communicate the decision taken by the State Government in pursuance of the Government Circular dated 29th April, 2015.

10) It is argued on behalf of the State Government that in view of the Government Circular dated 29th April, 2015, and appointment of a committee for preparing perspective plan by the circular dated 20.7.2015, the claim of the petitioner/institution, for according sanction to open Arts, Science and Commerce College for the academic year 2015-2016, cannot be considered.

11) Mr. Dixit, learned Senior counsel appearing for the Respondent/State, placing reliance on the provisions of Section 82 of the Maharashtra Universities Act, contends that a time frame has been prescribed for according final permission to open a new college and since the period prescribed under the said provision has come to an end, it is not possible for the State Government to consider the application of the petitioner/institution for granting permission to open a new college during the academic year 2015-2016.

12) It is necessary to take a note of the important features of the policy declared and framed by the State Government under its Government Resolution dated 30th October, 2010, and para 4 thereof prescribes that, perspective plan prepared by the university shall be operative for a period of five years. It is worthwhile to note that although Section 82 of the Act of 1994 does not prescribe the period of operation of the perspective plan, the policy of the State Government declared under its Government Resolution dated 30th October, 2010, prescribes that the perspective plan prepared by the

university shall be operative for a period of five years. It thus can safely be inferred that the perspective plan prepared by the North Maharashtra University for the academic year 2012-2013 shall remain in operation up to the academic years 2016-2017. It has not been pointed out to us that the policy decision taken by the State Government under GR dated 30th October, 2010, prescribing existence of the perspective plan, for a period of five years prepared by the university, has been deviated or that there is any change in the aforesaid policy.

13) The State Government has placed reliance on the Government Circular dated 29th April, 2015, where under it has been declared that the State proposes to appoint a committee for preparation of perspective plan and the concerned universities are expected to prepare a revised perspective plan and tender the same to the State Council of Higher Education within a period of three months. It must be noticed that firstly the decision taken by the State Government on 29th April, 2015, recording therein that no permission could be granted for opening of new colleges during the academic year 2015-2016; and decision in that

regard will be taken only after preparation of the perspective plan, does not appear to be a policy decision/declaration of the State. It is merely a Circular and the Circular is not expected to transgress the policy decision taken by the State Government declared under GR dated 30th October, 2010. The GR dated 30th October, 2010 prescribes that the perspective plan would be in operation for a period of five years; and in the instant matter, since the North Maharashtra University has declared the perspective plan for the academic year 2012-2013 and the same shall remain operative up to the academic year 2016-2017. Apart from this, the decision taken under the Government Circular dated 29th April, 2015 would be prospective in operation and shall not come in the way of the State Government for taking a decision for granting final approval for opening of new colleges in favour of the petitioner institution. It must be taken note of the fact that the application was presented by the petitioner institution for opening of new college in observance of the due procedure prescribed under Section 82 of the Act of 1994 as well as the GR dated 30th October, 2010. The proposal tendered by the petitioner has

been duly recommended by the university and the State Government has also issued the letter of intent, declaring its intention to permit the petitioner/institution to open a new college for the academic year 2015-2016.

14) An affidavit in reply was also tendered on behalf of the State Government in Writ Petition No. 5849/2014, which was disposed of by the Division Bench of this court on 19th December, 2014 on the assurance of the State Government. It would be, therefore, in fitness of things for the State Government to consider the proposal tendered by the petitioner institution for granting final approval for opening a new college for the academic year 2016-2017.

15) The learned Sr. Counsel appearing for the State Government, states that validity of the Circular is not challenged and as such, the same shall have to be considered as having binding force while taking decision by the State Government. As we have observed herein above that the perspective plan shall have to be prepared by the university under the

provisions of Section 82(1) of the Act of 1994 and in the instant matter, the said perspective plan has been prepared by the North Maharashtra university during academic year 2013-2014 for a period of five years, which would be operative up to 2016-2017. The policy framed by the State Government, declared under GR dated 30th October, 2010 prescribes that the perspective plan prepared by the university shall be valid for a period of five years. In such circumstances, we have a serious doubt as to whether the State Government can proceed to curtail the life/span of the perspective plan and take a decision for preparation of fresh perspective plan even for the academic year 2016-2017.

16) It has been pointed out that in view of the provisions of Section 82(1) of the Act of 1994, the university is required to prepare a perspective plan, which shall have to be approved by the State Council of Higher Education.

17) An affidavit in reply has been presented on behalf of North Maharashtra university, stating therein that the perspective plan has been prepared,

as provided under Section 82(1) of the Act and GR dated 30th October, 2010 for a period of five years, i.e. 2012-2013 to 2016-2017. The said perspective plan was placed before the various statutory authorities/bodies, i.e. State Council of Higher Education for consideration and after necessary sanction and approval from the statutory bodies of the university, the North Maharashtra university has finalized the perspective plan for the academic year 2012-2013 to 2016-2017. It is further contended that as provided in the GR dated 30th October, 2010, the university has submitted the perspective plan for sanction to the Director of Higher Education, Pune, and the said authority was expected to submit the same to the Maharashtra State Council for Higher Education for necessary sanction. It is further contended that on 21.7.2011, the university has again submitted the perspective plan to the State council for Higher Education for necessary sanction. In similar fashion, during every academic year, the university submitted the plan for the academic year 2012-2013 and 2013-2014 to the State Council for Higher Education for necessary sanction. However, till this date, no communication has been received

from the said authority. It is not disclosed as to whether the Maharashtra State Council for Higher Education has accorded approval to the perspective plan prepared by the university as well as the plan tendered for approval every year by the university, as contemplated by Section 82(1) of the Act of 1994.

18) Section 82(1) of the Act of 1994 mandates preparation of the perspective plan by the university and approval for the said plan by the State Council for Higher Education. In the event, the perspective plan has not yet been approved by the State Council for Higher Education, We direct the State to ensure sanction of the perspective plan by the State Council for Higher Education, as expeditiously as possible and preferably within a period of eight weeks from today. It would, however, be open for the State Council for Higher Education to consider the perspective plan prepared and forwarded by the North Maharashtra University during the academic year 2012-2013 and yearly plans within the contemplation of Section 82(1) of the Act of 1994, presented during each of the academic years within time frame, stipulated as above.

19) In this view of the matter, we direct the State Government to consider the proposal of the petitioner institution for the academic year 2016-2017 for the reason that the time frame, prescribed under the GR dated 30th October, 2010 as well as the provisions contained in Section 82 of the Act of 1994, has come to an end.

20) We have issued directions to the State Government to consider the application tendered by the petitioner/institution in the context of letter of intent, already issued to the petitioner for opening a new college during the academic year 2016-2017.

21) The State is expected to take a decision in the matter in accordance with and subject to approval to the perspective plan by the State Council for Higher Education.

22) Rule is accordingly made absolute in above terms. There shall be no order as to costs.

sd/-
(P.R.BORA)
JUDGE

sd/-
(R.M.BORDE)
JUDGE

bdv/