

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1959 OF 2017

Namita Education and Welfare
Society, having registered office
at Shree Complex, Bldg no.5/201,
J Wing, Sayani Road, Dadar (W)
Mumbai-400 025.

....Petitioner

: V E R S U S :

1. State of Maharashtra
Ministry of Higher & Technical
Education, Education Department,
Mantralaya, Mumbai, Maharashtra
State, Through the Government
Pleader, High Court, Bombay

2. University of Mumbai
Through its Registrar,
Fort, Mumbai-400 032.

....Respondents

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Mr. B.P. Pandey a/w. Mr. Hemant Ghadigaonkar i/by. Mr.
Vikas B. Pandey, Advocate for the petitioner.

Mr. Himanshu Takke, Asst. Government Pleader for the
State, respondent no.1.

Mr. Rui A. Rodrigues, Advocate for respondent no.2.

**CORAM :- B.R.GAVAI &
 SANDEEP K. SHINDE, JJ.
DATE :- 7TH NOVEMBER, 2017.**

JUDGMENT (PER :- SANDEEP K. SHINDE, J) :

1. The State, in its Higher and Technical Education Department declined the permission to the petitioner Institute, for opening new faculty in Bachelor of Arts and Science in their existing College on 23rd September, 2016 and thus this petition.

2. The petitioner, Society is running the Institute by name, Siddharth College of Arts at Boradpada, Post-Chargaon, Tal-Ambernath, District-Thane which has been granted permission for B.ED and B. Com faculties without grant-in-aid by the State. The University, by advertisement dated 9th December, 2015 invited proposals as per the provisions of the Maharashtra Universities Act, 1994 for the academic year 2016-17 from the Management/interested Societies/Trusts of

affiliated Colleges to start new college program/division/subjects (Under Graduates and Post Graduates). In response thereto, the petitioner had applied for opening new B.SC and B.A. Faculty. The Local Enquiry Committee submitted its inspection report to the Mumbai University on 16th April, 2016 on norms as prescribed. It appears, the management Council in its meeting dated 27th April, 2016 resolved to grant affiliation qua two faculties, then applied for by the petitioner, Society and forwarded its recommendation to the State in terms of Section 82(4) of the Maharashtra Universities Act, 1994.

3. It is the petitioner's case that, there was no response from the State and hence information was sought under the Right to Information Act, whereby it was informed that the approvals were granted to the respective institutes by respondent no.1 vide orders dated 4th July, 2016 and 9th September, 2016 which were published on its website. These orders were not

displaying the names of the petitioner's institute on the website. The petitioner, however, was not communicated with the reasons for declining the permission and as such the petitioner had filed Writ Petition No. 327 of 2017, wherein the order of rejection/declining permission passed by the respondent no.1, dated 23rd September, 2016 was submitted to the petitioner. Writ Petition No. 2327 of 2017 was disposed off with liberty to challenge the order of rejection dated 23rd September, 2016 which is impugned in the present petition.

4. The State filed its reply through Dr. Bhosale, Joint Director of Higher Education, Konkan Region and resisted the petition on various grounds amongst which the foremost ground is, Government vide policy decision dated 23rd September, 2015 decided not to grant permission for opening a new College and the State had decided to prepare a master plan. In other words, the petition was opposed on the ground of a mistaken belief that the petitioner had applied to start a "new Degree

College”.

5. Heard Learned Counsel for the petitioner and Learned AGP for the State.

6. Perused the report of the Local Inspection Committee and the impugned order dated 23rd September, 2016 with Annexure thereto, inter-alia, pointing out the deficiencies. Also perused the provisions of Section 82(5) of the Maharashtra Universities Act, 1994.

7. The Learned Counsel appearing for the petitioner has pointed out that, the State refused the permission for want of compliance of norms, enumerated against point nos.7, 11, 12 (2.1), 12(2.3), 14 and 15. As against this, he has taken us through the Local Committee Report on norms of which non-compliance was alleged. It could be seen that, as against point no.7, the Local Committee found that a “detailed budget of current year” was available but respondent no.1 denied, it without placing any other document in support thereof. As against Point no.11, the Local Committee found certified

copy of documents, showing land was Non-Agricultural where the College is being run; As against this, in the impugned order, respondent no.1 reported that the land is not Non-Agricultural land. As against Clauses-12(2.1) and (2.3) which relates to water storage facility and drainage facility, the Local Committee had reported, these norms were not applicable, may be for the reason that, there is already a College running wherein the petitioner intends to start the new faculties. As against Point no.14, which relates to facility of Library Books, but in the impugned order, it is reported "cannot be substantiated" This observation is not comprehensible. Be that as it may be, as against Point no.15, the Local Committee put a remark "this requirement is applicable only to a new College starting for the first time", as against this, in the impugned order remark is that, the papers are not available.

8. It would be interesting to read the Affidavit filed by the State and in particular paragraph-4. The

Affidavit does not refer to the alleged deficiencies pointed out in the impugned order by respondent no.1. On the contrary, the State's reply proceeds on a footing that the permission was refused because the petitioner had applied to start a "new Degree College" and in view of the Government Resolution dated 29th April, 2015 the State had resolved not to grant permission for opening "new Colleges". The Affidavit further proceeds to say that, the permission has been refused for want of master plan in place for 2016-17.

9. The State could not place on record any document to substantiate its observation in the impugned order and/or to negate the report of the Local Enquiry Committee, which had visited the College and after verification submitted a report to the University.

10. That after going through the reports as aforesaid, we have no manner of doubt that the order impugned dated 23rd September, 2016, inter-alia declining permission to the petitioner to start the new

faculties of B.A. and B.Sc in their existing colleges, is nothing but complete non-application of mind and erroneous. Neither in the impugned order, nor in the Affidavit, the State could point out that, the report of the Local Enquiry Committee on norms as against point nos.7, 11, 12, 14 and 15 was incorrect and/or erroneous.

11. In our view, in absence of any material contrary to the report of the Local Inspection Committee who had an occasion to visit the premises of the petitioner, the said report would have a primacy and cannot be set aside and/or faulted with unless some other documents are placed on record contrary to the report of the Local Inspection Committee.

12. In this view of the matter, we are of the considered opinion that, the order passed by respondent no.2 purportedly under Section 82(5) of the Maharashtra University Act, 1994 dated 23rd September, 2016, inter-alia, declining the permission to the petitioner to start a new Faculty of B.A. and B.Sc in their existing College for

the academic year 2016-17 is erroneous and bad in law and as such quashed and set aside.

13. The petition therefore succeeds. Rule is discharged and hence the following order.

14. The impugned order dated 23rd September, 2016 insofar as it relates to the petitioner is quashed and set aside. Respondent no.1 is directed to grant permission to the petitioner to start the process of B.Sc and B.A. from Academic Session 2018-19. Needless to state that, the intake capacity for the said courses will be determined by the University in accordance with law.

(SANDEEP K. SHINDE, J)

(B.R. GAVAI, J)