

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

WRIT PETITION NO. 6143 OF 2012

1. Public Education Society,
Walwadi, Gondpur Road, Dhule,
Through its President :
Shri Sahebrao s/o Vitthalrao Bhamre
Age 68 years, Occu. Legal Practitioner,
And Agriculture,
R/o Professor Colony Road, Deopur,
Dhule, District Dhule .. Petitioner

versus

1. The State of Maharashtra,
Through the Secretary for Higher and
Technical Education Department,
Mantralaya, Mumbai.
2. The Director,
Higher and Technical Education
Department, Maharashtra State,
PUNE
3. The North Maharashtra University,
Namavi Nagar, Jalgaon,
District Jalgaon,
Through its Registrar
4. Sharda Shaikshnik and Samajik
Sanstha, Dhule, 71, Satsang Colony,
Near Shani Mandir, Walwadi,
Gondpur Road, Dhule,
Dist. Dhule
Through its President .. Respondents

Mr. Vinayak D. Hon, Senior Advocate for petitioner
Mrs. Vaishali S. Choudhary, Assistant Government Pleader for
respondents no.1 and 2

Mr. Yogesh Bolkar, Advocate for respondent no. 3

Mr. Anand V. Patil (Indrale), Advocate for respondent no.4

CORAM : SUNIL P. DESHMUKH
P. R. BORA, JJ.

DATE : 8-01-2018

ORAL JUDGMENT (PER : SUNIL P. DESHMUKH, J.

1. Rule. Rule made returnable forthwith and heard learned counsel for appearing parties finally by consent.

2. Petitioner poses challenge to permission granted to respondent no.4 by respondent no. 1 under order dated 19-06-2012 for conducting courses for graduation in science at Walwadi, Taluka and District Dhule and also seeks mandamus to respondent no. 3 - University not to grant affiliation to respondent no. 4 to run said course in its college at Walwadi, Dhule.

3. Learned senior advocate Mr. Hon appearing on behalf of petitioner submits that petitioner - institution had been granted permission to run Arts, Commerce and Science faculty courses at Walwadi, Dhule way back in 2004-05. Since then, petitioner had been running faculty of Arts on its affiliation being approved by respondent no. 3. For want of

students till 2011-12, commerce and science faculty courses could not be started. In the circumstances, petitioner had sought permission to run said courses at Walwadi, Dhule around 2012.

4. However, while permission had been granted to petitioner, it transpires that a permission had also been granted to respondent no. 4.

5. According to his instructions, application for permission by respondent no. 4 to respondents no. 1 had been for running B. C. A. course at Walwadi, relevant for commerce faculty. Respondent no. 4 had submitted proposal for extension of faculty and not starting a new college. Permission had been granted to respondent no. 4 for running the science faculty at Deopur, Dhule and not at Walwadi.

6. Learned senior advocate further submits respondent no. 4 started running science faculty course at Walwadi, Dhule upon a piece of land adjacent to that of the petitioner. He submits, permission could not have been granted for running science faculty to respondent no. 4 upon a land which is just

adjacent to the land belonging to petitioner separated only by intervening compound wall. He submits, this proximity of science faculty sought to be run by respondent no. 4 has denuded petitioner of students for science faculty. He further submits that in any case.

7. He submits, despite objection on the count that respondent no. 4 had not submitted any proposal for science faculty at Walwadi, no material supporting the case of respondent no. 4 of having science faculty at Walwadi had been placed forth thus far. Proposal by respondent no. 4 for running said faculty in its college had been deficient in many respects. In the first place, the land requirement cannot be said to have been satisfied by respondent no.4, 7 x 12 extract is being relied on for the same.

8. According to learned counsel though perspective plan prepared accommodates two colleges at Dhule yet, it has to be considered that both the colleges are not supposed to be in one and the same locality. According to him, logically two education institutions so far as science faculty is concerned ought to be geographically suitably placed so that it would be a facility for citizens.

9. Learned senior counsel passingly refers to that proposal for science faculty by respondent no. 4 has been granted since one of the persons associated with respondent no. 4 had been a member of academic council of respondent no.3. He submits that even otherwise, the overreaching conduct of respondent no. 4 had been noted by this court in present writ petition, while passing an order on 05-09-2012 granting interim relief in the shape of putting restraint on respondent no. 4 from admitting students to science faculty since it had not received affiliation from respondent no. 3. He submits, despite this order, subsequently respondent no. 4 had admitted students to science faculty at Walwadi and had been running science college at said place. He thus urges this court to intervene in the matter and set aside and cancel permission granted to respondent no. 4 for running a science faculty at Walwadi.

10. Learned counsel Mr. Yogesh Bolkar appearing on behalf of respondent no. 3 - University refers to that so far as perspective plan which has been prepared in accordance with provisions of section 82 of the Maharashtra Universities Act, 1994 is concerned, same provides for two establishments of

science faculty in Dhule city. According to his instructions, *inter-alia*, Walwadi and Deopur form part of and comprise Dhule city. It cannot be said that Walwadi is not part of Dhule city. He submits, pursuant to the plan, applications had been invited for opening new colleges or institutions and were scrutinized as required, by board of college and university development with the approval of management committee and were forwarded to the State government. The State government appears to have accordingly processed applications and both the proposals which were recommended by the university had been granted.

11. He submits, writ petition no. 544 of 2013 filed by petitioner was disposed of with direction to Academic Council to take decision expeditiously without getting bogged down by pendency of present writ petition. Subsequent to the same, while affiliations were applied for, respondent no. 4 had been granted affiliation whereas, it was rejected in case of petitioner. He refers to writ petition no. 4358 of 2013 at petitioner's behest against aforesaid. In the same, resolution adopted by academic council dated 28-05-2013 had been set aside under order dated 19-06-2013 with direction to University to take decision in accordance with relevant rules

and relevant statutes, further observing that husband of president of institution - respondent no. 3 in said writ petition (respondent no.4 in present writ petition) shall keep himself away from decision making process. Accordingly, applications were re-processed and affiliation had been granted to petitioner as well as respondent no. 4.

12. He submits that the whole procedure as prescribed under the provisions of Maharashtra Universities Act about preparation of master plan, about seeking permission and recommendation of the institution had been followed as required, particularly sections 81 onwards upto section 85. He submits that on grievance of petitioner in respect of respondent no. 4's land holding, it had been found that proposal by respondent no. 4 had been in acceptable order according to norms and had been processed and recommendation of the institution for running science faculty had been made and permission had been granted by the government. He submits, there is no particular prohibition for granting permission or for that matter affiliation when the institutions are adjacently situated. The proposals are considered in accordance with provisions, norms and

guidelines and accordingly were processed, considered and granted affiliation. He submits, there are no lacunae in the undergone processes.

13. Learned Assistant Government Pleader for State submits that recommendations for permissions forwarded by the University had been duly considered by the government. It is further being referred to that after finding the proposals in order, it had been considered right and proper and petitioner and respondent no. 4 had been granted permission for science faculty. All requisite parameters as were considered by the university were examined and since the proposals were found to be in order and in accordance with law permission had been granted.

14. Learned counsel Mr. A. V. Patil (Indrale) appearing on behalf of respondent no. 4 submits that challenge posed to permission granted to respondent no. 4 to run science faculty at Walwadi is without any substance and has been raised because despite permission having been granted to petitioner to run science faculty since 2004, petitioner had failed to muster sufficient strength of students to start science faculty. While the action had been mooted by respondent no. 4 to run

science college at Walwadi around 2012, after preparing all the infrastructure required therefor, the same has been considered to be potential threat to run science faculty of petitioner. As such, around the same time petitioner filed application again for permission for running science faculty at Walwadi. Though petitioner had objected to the proposal of respondent no. 4 for permission and affiliation claiming that two institutions cannot be accommodated for running science faculty in Dhule city, both the proposals were duly considered, processed and granted permission. Proposal of respondent no. 4 since being in compliance with requirements of provisions of the Maharashtra Universities Act, 1994, norms and guidelines, came to be granted. The proposal had not been deficient on any count. There is no embargo either under the provisions of the Maharashtra Universities Act or norms prescribed in that behalf. What is to be seen is, whether the proposals comply with legal and other requirements. Since respondent no. 4's proposal had been in compliance of such requirements, permission granted to respondent no. 4 shall not be faulted with on any feeble and untenable grounds as sought to be raised by petitioner.

15. He submits that despite permission since 2004 and even after 2012, the petitioner has not been able to have students for running science faculty and is unnecessarily putting blame for the same on respondent no. 4. Challenge by petitioner is vacuous on all counts. He submits that objection by petitioner on the ground of landholding of respondent no. 4 not being sufficient has been duly considered since persons in whose name landholding is shown, have been unequivocal on that they hold it for respondent no. 4 and for no other purpose and/or person. All these aspects have been properly examined, scrutinized and thereafter the permissions have been considered and granted.

16. Provisions of Maharashtra Universities Act, 1994, Chapter X which deals with permission, affiliation and recognition. Section 82, envisage preparation of a perspective plan at the instance of University and approval to the same by State Council for Higher Education for educational development for the location of colleges and institutions of higher learning. It appears, in accordance with the same, as per perspective plan prepared for Dhule city, there has been accommodation for two education institutions for running

science colleges. So far as this aspect is concerned, there is no dispute among the parties.

17. Further, in accordance with provisions of Maharashtra Universities Act, the managements had sought permission to open colleges for higher education and same had been scrutinized by the university and was forwarded to State government with approval and recommendation of management committee. Sub-section (5) of section 85 of the Act invests State government with power to consider grant of permission in its absolute discretion, budgetary resources, suitability of the managements seeking permission to open new institutions and the State level priorities with regard to location of institutions of higher learning.

18. There had been litigation before this court. Under the orders of this court the question of affiliation to petitioner as well as respondent no. 4 had been considered and both the application for affiliation were considered and granted by the university. Affiliation granted to respondent no. 4 had not been a matter of challenge before any authority subsequently.

19. It, thus, emerges that while petitioner-institution had been granted permission for science faculty in 2004, till

2012, it had not been able to start and run the same. While application seeking permission for running science faculty at Walwadi had been moved by respondent no. 4, challenge to the same is sought to be posed on the ground that starting of such science faculty in the adjacent land would affect strength of students for running science faculty in petitioner's college. There does not appear to be any prohibition under the guidelines or norms or there being any restriction on having two institutions running science faculty in close vicinity. Two science colleges were provided for under perspective plan and the proposals were processed which were fulfilling requirements under provisions of Maharashtra Universities Act and guidelines in that respect.

20. The contention of the petitioner that there can not be permission or affiliation for running science faculty at Walwadi, Dhule to respondent no. 4 is not supported by any material, legal or otherwise. As stated earlier, perspective plan provides for two colleges at Dhule, and Walwadi indisputably forms part of city of Dhule. It has come forth that petitioner could not muster students from 2004-2005 for science faculty. There is no material placed by petitioner in

support of his submission that running of science faculty at Walwadi had affected students strength in its science faculty.

21. The other submission on behalf of the petitioner with regard to respondent no. 4 having applied only for B.C.A. course also appears to be unfounded when considered with reference to affidavit-in-reply by University referring to that there has been indeed an application for science faculty at Walwadi by respondent no. 4 institution and accordingly the University and State government have considered proposal of respondent no. 4 and accorded approval to the same.

22. Aforesaid background does not persuade us to disrupt the ongoing running of science faculty by respondent no. 4 at Walwadi by intercepting the permission and affiliation granted. It does not appear that writ petition carries any substance to successfully pose challenge to the permission and affiliation granted to respondent no.4.

23. Writ petition, as such, fails and is dismissed. Rule is discharged.

P. R. BORA,
JUDGE

SUNIL P. DESHMUKH,
JUDGE

pnd/-