

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

WRIT PETITION NO. 6366 OF 2018

Adarsh Education Society ..Petitioner

Versus

The State of Maharashtra and Ors. ..Respondents

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Mr. V. J. Dixit, Senior Advocate i/b Mr. A. N. Nagargoje, Advocates for the Petitioner.

Mr. S. M. Ganchari, A.G.P. for Respondent Nos.1 to 3.

Mr. K. M. Suryawanshi, Advocate for Respondent No.4.

Miss. P. S. Talekar, Advocate for Respondent No.5.

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WITH

WRIT PETITION NO.5531 OF 2018

Shri. Bhagwan Mahavir Bahu Sevabhavi
Sanstha, Through its President ..Petitioner

Versus

The State of Maharashtra and Ors. ..Respondents

...

Mr. N. B. Khandare i/b Mr. D. P. Palodkar, Advocates for the Petitioner.

Mr. S. M. Ganchari, A.G.P. for Respondent Nos.1 and 2.

Mr. S. G. Chapalgaonkar, Advocate for Respondent No.3.

Mr. S. D. Tawashikar, Advocate for Respondent No.4.

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

Closed for Orders on : 25.04.2019.

Order Pronounced on : 07.06.2019.

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

1. The petitioner in writ petition no.5531/2018 had applied for permission to open new Arts, Commerce and Science College at village Banoti, Taluka Soyegaon, District Aurangabad, whereas the petitioner in writ petition no.6366/2018 had submitted proposal for opening the Senior College in the faculty of Arts and Science at village Banoti, Tq. Soyegaon, Dist. Aurangabad. The proposal of the petitioner alongwith respondent Rajkuwar Bahuuddeshiya Sevabhavi Sanstha were recommended by the University. The State Government granted letter of intent to respondent-Rajkuwar Bahuuddeshiya Sevabhavi Sanstha for starting Arts, Commerce and Science College. The proposal of the petitioner in writ petition no.5531/2018 is turned down on the ground of deficiencies and the proposal of the petitioner in writ petition no.6366/2018 is not considered as letter of intent is issued to respondent-institution.

2. Mr. Dixit, learned senior counsel for petitioners submits that the respondent to whom the letter of intent is issued does not possess NAAC certificate. The same respondent had applied for permission to open the senior college at Hiwara, Tal. Badnapur, Dist. Jalna. The said proposal is turned down by respondent no.1 on the ground of not possessing NAAC certificate. However, for opening

the senior college at Banoti, the said condition of respondent-Institution not possessing NAAC certificate is ignored. The action of respondent no.1 granting letter of intent in favour of respondent is illegal. The petitioner in writ petition no.6366/2018 is a minority institution. The petitioner-institution is registered in the year 1991. The State Government also held that the petitioner-institution is eligible, but only because respondent no.1 has granted permission to the respondent-Rajkuwar Bahuuddeshiya Sevabhavi Sanstha to open the senior college at Banoti, the proposal of the petitioner is not considered. The respondent no.5 does not fulfill the requisite norms and though there are several deficiencies including deficiency of NAAC certificate, still permission is granted in favour of respondent no.5. The said action is politically motivated. The office bearers of respondent no.5 belong to ruling party and because of political consideration, permission is granted in their favour and as the office bearers of the petitioner belong to the opposite party their proposals have been turned down. The respondent no.5 also does not fulfill other several conditions such as not having sufficient infrastructure, land, hostel, N.A. permission still due to political consideration and pressure, letter of intent is issued in its favour. According to the learned counsel, the provisions of the Maharashtra Universities Act, have been

flouted. The Government Resolution dated 15.09.2017 laying down the conditions for issuance of letter of intent are also not followed. They are followed more in breach. As per Clause 2.3 of the Government Resolution dated 15.09.2017, the recommendation cannot be made of the institutions who are already running other colleges without NAAC certificate.

3. The learned A.G.P. submits that as per the procedure incorporated in Section 109 of the Maharashtra Public Universities Act, 2016, the concerned University has submitted proposal for grant of permission for Academic year 2018-2019. Total four proposals for the place at Banoti, Taluka Soyegaon for Academic year 2018-2019 were received to the Government. Out of four proposals received, three institutes were fulfilling the norms as prescribed. Therefore, as per the provisions of Section 109(3) of the Maharashtra Public Universities Act, 2016 the Government in exercise of discretionary powers has granted permission to issue letter of intent vide Government Resolution dated 28.02.2018 to Rajkuwar Bahuuddeshiya Sevabhavi Sanstha.

4. Mr. Awate, learned counsel for respondent-institution submits that the proposal of the respondent-Society was also recommended. There is no infirmity in issuing letter of intent to the respondent-Society. Considering the proposal for

final approval of the respondent no.5-society, the State Government informed two deficiencies to respondent no.4-University that it does not possess required area and leave and license agreement of the required constructed area. The letter of intent issued in favour of respondent no.5 is valid till 31.01.2019. Chance was given to respondent no.5-Society to remove the deficiencies and submit compliance. The respondent has removed the deficiencies by submitting the registered leave and license agreement and 7/12 extract for showing the land possessed by respondent no.5-society. The compliance report is also forwarded by respondent no.4-University. Now the matter is pending before the Government of Maharashtra for final decision. The learned counsel submits that the proposal of respondent no.5-society for accreditation by NAAC is pending. As per the Clause 2.3 (c) of the Government Resolution dated 15.09.2017 the proposals will have to be submitted with written reasons in respect of non-accreditation by NAAC separately to the Government and accordingly the proposal of respondent no.5 was forwarded to the Government by respondent no.4-University. No illegality has been committed.

5. Mr. Khandare, learned counsel adopts the arguments of Mr. Dixit, learned senior counsel and submits that though the State has come to the conclusion that the petitioner is eligible and can be considered for granting permission, however has

not considered the proposal only on the ground that letter of intent is granted to respondent no.5-society. The same is illegal, arbitrary and does not stand to reason.

6. We have considered the submissions canvassed by the learned counsel for the parties.

7. Section 107 to 109 prescribe the complete procedure for grant of permission to open new senior college at particular place. The place where the permission is to be granted for opening new senior college should find place in the perspective plan prepared by the University under Section 107 of the Maharashtra Public Universities Act, 2016. Every step has to be within the time frame as stipulated in Section 109. The provision also specifies the requirements to be complied with by the institution. The Government Resolution dated 15.09.2017 also supplements to section 109.

8. If there are two or more institutions whose proposal is complete in all respects and are eligible to be considered, then naturally the respondent should make a comparative study of all eligible proposals and then take decision. In the present case, it does not appear that, the comparative study has been made by the Government while granting letter of intent to the respondent-Society and ignoring proposal of petitioner-society though they are found eligible. We do not find any

marking system evolved to consider the pros and cons of the proposals.

9. The Government has a discretion in granting permission to a particular college if there are two or more eligible proposals. However, the discretion that exist with the Government is not merely an ordinary discretion, but a discretion that has to be exercised judiciously and not capriciously. It would be found that, the respondent-State has not come with the case that though petitioners were eligible to be considered for the grant of permission and their proposals were also complete in all respects, still the proposal of respondent was much better or that the respondent had better facilities and experience. The petitioner's proposal are turned down only on the ground that they are eligible but letter of intent is issued to respondent no.5. The proposals of petitioners were also recommended within stipulated time. In such case, the State Government ought to have evaluated all the proposals and ought to have granted permissions to the more deserving institutions. The Government is required to arrive at a subjective satisfaction based on objective assessment of the proposals. The Government ought to have evolved a particular criteria for exercise of discretion. We had called for the record of the State Government. From the record it appears that, the case of respondent was considered alongwith other proposals and says that

on merits and as per Section 109(3)(g), the letter of intent is issued to respondent-society. However, in fact the respondent-State has not justified as to how the proposal of the respondent was more meritorious than that of the petitioner.

10. This Court certainly would not sit in Appeal over the decision of the Government. No doubt State Government has a discretion, but as observed, said discretion cannot be exercised in arbitrary manner. More particularly, when after issuance of letter of intent deficiencies were pointed out by the State Government that is absence of leave and license agreement and about the constructed area, so also non-availability of the NAAC certificate. The respondent-Society is operating since a long time and its one proposal for starting senior college at another place has been held to be ineligible on the ground that institution does not possess NAAC certificate, however in the present case the same is accepted. The State certainly has not come out with clear explanation in this regard.

11. The time frame under Section 109 is mandatory. The same cannot be deviated. The proposals were for the Academic year 2018-2019. The letter of intent is already issued in favour of respondent-institution and till January 2019 all the deficiencies were required to be cleared and Government was to take further decision whether to

grant permission. It would be too late in the day to entertain the petitions of petitioners, as it is submitted that the respondent no.5 has cleared the deficiencies. It is for the Government to consider whether deficiencies are cleared and all the requirements of Section 107 to 109 of the Universities Act are complied, such as leave and license agreement, NAAC accreditation certificate and constructed area. If after verifying the documents it appears to the Government that respondent no.5 has not cleared the deficiencies then certainly permission would not be granted to respondent no.5 and petitioner will be entitled to apply afresh.

12. With the aforesaid observation, writ petitions are disposed of. No costs.

(A. M. DHAVALÉ)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/April-19