

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

WRIT PETITION NO.6111 OF 2018

Nutan Vidyalaya Shikshan Sanstha,
Sailu, Tq. Sailu, Dist. Parbhani,
through its Secretary ..Petitioner

Vs.

1. Principal Secretary,
Higher and Technical Education
Department, State of Maharashtra,
Mantralaya, Mumbai – 32
2. The Registrar,
Swami Ramanand Teerth,
Marathwada University,
Nanded, ..Respondents

Mr.S.R.Chaukidar, Advocate h/f. Mr.V.S.Panpatte,
Advocate for petitioner

Mr.K.N.Lokhande, AGP for respondent no.1

Mr.A.D.Aghav, Advocate for respondent no.2

CORAM : PRASANNA B. VARALE

AND

R.G. AVACHAT, JJ.

DATE : JANUARY 24, 2020

ORAL JUDGMENT (*Per PRASANNA B. VARALE, J.*) :-

Heard Mr.Chaukidar, learned Counsel for the
petitioner, Mr.Lokhande, learned AGP for respondent

no.1 and Mr.Aghav, learned Counsel for respondent no.2.

2. Rule. Rule made returnable forthwith. Heard finally with the consent of learned Counsel for the parties.

3. The petitioner is an educational institute imparting academic facilities to the residents of area namely Sailu, Dist. Parbhani. The facts, which are not disputed, are as under :-

The petitioner is an Institute registered under the Societies Registration Act and running a trust registered under the Bombay Trust Act. The petitioner - Society is running two schools, two junior colleges (i.e. one girl's college and one senior college), catering educational facilities to more than 8000 students of which, at least, 50% of are girl students. The petition also refers to the achievements of the petitioner - Institute for academic excellence i.e. the Principal of the college

has been awarded as a 'Best Teacher' by the State of Maharashtra; the examination centre of the petitioner – Society has been awarded as 'Best exam Centre' by Swami Ramanand Teerth Marathwada University ("the University", for short) in the year 2005. The rural college of the petitioner has been awarded as 'Best Rural college' in the year 2008-09. The petitioner – Institute has been accredited as an 'A+ grade' Institute twice in the years 2003 and 2013 by National Accreditation Academic Council. Be that as it may.

4. Respondent no.2 – University issued its perspective plan for the academic year 2018-19. The perspective plan refers to the area wherein, there is need to start a new degree college. In the said perspective plan of year 2018-19, there is reference of Parbhani District at Annexure III. Perusal thereof shows the proposal to start new college. Annexure III, reads thus :-

Annexure – III

4.3 Parbhani District :Information:(9 Talukas)

Parbhani, Gangakhed, Sonpeth, Pathri, Manwat, Palam, Selu, Jintur and Purna (9)
It is proposed to start new colleges at the following places in the Parbhani district
in Academic Year 2018-19

Sr. No.	Place of College, Taluka	Arts/ Commerce/ Science Colleges	Other Colleges
1.	Parbhani City (Within Municipal Corporation jurisdiction)	01	--
2.	Sailu (Within Municipal Council jurisdiction)	--	01 Woman (ACS)
3.	Mandakhali, Tq. Parbhani	01	--
4.	Brahmangaon, Tq. Parbhani	01	--

5. In the above tabular statement, a reference is made to Sailu at Serial No.2 (within Municipal Council's jurisdiction), which shows that there was room for starting a new degree college for women. Accordingly, applications were called for and in response to the perspective plan, the petitioner – Institute submitted its proposal to respondent no.2 – University on 28.09.2017. A copy of the said proposal is placed on record. It may not be out of place to refer to the financial position of the Institute,

which is stated in the proposal as per the audited accounts. It refers to the properties of the Institute and also the cash in hand available in the bank account to the tune of Rs.58,25,695.84 ps. Then, in the proforma application, reference is made in column no.11 about availability of infrastructural facilities and it is stated that the petitioner – Society has provided sufficient information to show the capacity of the Society to provide infrastructural facilities. The proforma application also refers to the financial arrangement being made by the petitioner – Society on infrastructural facilities as well as bearing financial burden on teaching and non-teaching staff. The audited account under the certificate of Chartered Accountant has been submitted with proforma application, a copy of which has been placed on record. The site plan and the undertaking of the petitioner – Institute dated 22.09.2017 duly signed by the Secretary and President of the petitioner – Society, has been annexed to the

petition. Perusal of these documents show that at present, there are 22 Professors working with the petitioner – Society with a full-time Principal and non-teaching staff. These documents include a statement that the employees have been appointed with the Institute by complying the norms of the University.

6. The petitioner – Institute has also placed on record the positive recommendation of the University at Annexure 'H'. The recommendation has been forwarded to the Additional Chief Secretary, Higher and Technical Education Department, Mantralaya, through the registry of respondent no.2 – University. In the tabular statement annexed to the said communication under column no.10, there is reference to statement of the University that the Institute complies with all the requisite norms so as to issue letter of intent. It is further stated that the University is forwarding positive recommendation in favour of the Institute.

Thus, in short, it can be stated that the petitioner's proposal was complete in all respect.

7. The reason assigned for rejection of the proposal of the petitioner – Institute by communication dated 15.03.2018 impugned in the petition, refers that the petitioner – Institute is not possessing requisite infrastructural facilities and that there is no positive certificate issued by the University.

8. In response to the notice issued by this Court, an affidavit-in-reply has been filed by respondent no.1, through Dr.Shaila Sarang, Joint Director of Higher Education, Nanded Division, Nanded and the reason for rejection is reiterated in paragraph 5. It reads thus :-

"5. It is submitted that the proposal scrutinised by the Government as per Government Resolution dated 15.09.2017 (Appendix B) and it is found that the petitioner has not completed the norm no.11 i.e. the management has not submitted the certificate from the

University that the college had infrastructural and basic facilities with the qualified teaching and non teaching staff as per the norms of the University Grant Commission and the State Government."

9. The petitioner – Institute has filed an additional affidavit and provided certain additional information supporting its claim. The data placed on record shows that there are as many as 1600 students taking education in the school of the petitioner – Institute from 5th standard to 10th standard; 1400 students in primary school; 1600 girl students in higher secondary school; and 3000 students are studying at junior college level and degree course level. The petitioner has also placed on record final recommendation of the University, which is said to be positive recommendation. The documents refers to all the details in respect of the infrastructural facilities and provision for teaching and non-teaching staff. The recommendation is under the signature of a three-member Committee. The petitioner

– Institute has placed on record the data available about the land/space which can be utilised for various activities catering needs of chamber of Principal's office, Laboratory, Library, ladies room, other staff room, meeting hall, lecture hall, sanitary blocks, etc. The petitioner has also placed on record various photographs in support of the statement that the petitioner – Institute possesses sufficient space for infrastructural facilities.

10. Learned AGP opposed the petition, on the ground that there is no certificate issued by the University that the petitioner – Institute is capable of providing teaching and non-teaching staff. This insistence of respondent no.1 – State, reflected from the submissions of learned AGP, is not only misplaced but as hollow as it could be. At the cost of repetition, we state that there are documents placed on record, showing the positive recommendation of the University, duly signed by the three-member Committee. In the affidavit-in-reply filed on behalf

of the University, through the Deputy Registrar Shri.M.H.Tribhuvan, Deputy Registrar, in paragraphs 2 and 6, it is stated as under :-

"2. I say and submit that the petitioner has submitted the proposal to open the Arts and Commerce college for women at Sailu for academic year 2018-19 which is received to the University on 29.09.2017. Accordingly, committee constituted for the scrutiny of the proposals by the University, said committee has scrutinised the proposal of the petitioner as per the provisions of the Maharashtra Public Universities Act, 2016 and guidelines prescribed in Government Resolutions dated 15.9.2017 and forwarded to the respondent no.1 on 29.11.2017 with positive recommendation.

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6. I say and submit that so far as column no.10 of the recommendation chart of the University which is at page 200 of the petition is concerned, it is the certificate of the University. University is not submitting any separate certificate for that on the recommendation chart, University only mentioning certificate of the University is yes or not."

This fact is reiterated in paragraph 7, which reads thus:-

7. I say and submit that norm.11 of the G.R. dated 15.9.2017 and column 10 of the recommendation chart of the University are different things. Certificate of the norm.11 should have submitted by the Institution along with proposal. In this case the petitioner has not submitted the above said certificate to the University with proposal and column no.10 of the recommendation chart of the University is concerned, the University not giving separate certificate, only mentioning on chart certificate of the University yes or not."

11. Considering all above-referred facts only inescapable conclusion can be drawn is that the rejection order impugned in this petition, is unsustainable. The impugned order appears to be passed on superficial and mechanical consideration of the proposal, without there being real assessment of the proposal. As such, the petition partly succeeds.

12. Hence, we pass following order:-

(i) The Writ Petition is partly allowed.

(ii) The impugned communication issued by respondent no.1 – State dated 15.03.2018, is quashed and set aside.

(iii) Respondent no.1 – State is directed to consider the proposal of the petitioner – Institute afresh and decide it expeditiously, and not later than eight weeks from receipt of this order

(iv) Respondent no.1 shall communicate its decision to the petitioner – Institute within two weeks from the date of decision.

(v) We make it clear that respondent no.1 shall not reject the proposal of the petitioner, raising the same ground again.

(vi) We also direct respondent no.1 – State Government to decide the proposal on the backdrop of the situation prevailed, when the proposal was submitted. Respondent no.1 shall not reject the proposal on the ground that in the perspective plan, area Sailu does not find place.

(vii) Rule is made partly absolute accordingly.

[R.G. AVACHAT, J.]

[PRASANNA B. VARALE, J.]

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