

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

909 WRIT PETITION NO.4050 OF 2020

SARASWATI SHIKSHAN PRASARAK MANDAL JAFRABAD
THROUGH ITS PRESIDENT
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. Ankush N. Nagargoje
AGP for Respondents No. 1 to 3 : Mr. S.B. Yawalkar
Advocate for Respondent no. 4 : Mr. S. S. Tope
...

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 21ST DECEMBER 2021

PC :

1. The petitioner has put forth prayer clauses (A), (B), (C) and (D) as under :-

- “A) For a writ of mandamus order or direction in the nature of mandamus directing the respondents herein to grant Letter of Intent in favour of the petitioner to start Senior College in the faculty of Arts, Commerce and Science at village Bharaj, Tq. Jafrabad, District Jalna in pursuance to the recommendation made by the respondent No. 4 – University.
- B) For a writ of certiorari order or direction in the nature of certiorari calling for the record and proceeding of the Letter dated 07.02.2019, issued by respondent No. 1 and after examining the

legality, validity and propriety thereof the said Letter may kindly be quashed and set-aside.

- C) For a writ of certiorari order or direction in the nature of certiorari calling for the record and proceeding of the Prospective Plan of the academic year 2020-21 be called for and after examining the legality, validity and propriety thereof, the respondents herein may kindly be directed to include village Bharaj, Tq. Jafrabad, District Jalna in the Prospective Plan in the ensuing academic years including academic year 2020-21.
- D) Pending hearing and the final disposal of the present Writ Petition, the respondents herein may kindly be directed to grant Letter of Intent in favour of the petitioner to start Senior College in the faculty of Arts, Commerce and Science at village Bharaj, Tq. Jafrabad, District Jalna.”

2. There is no dispute that the petitioner desires to start an Arts, Science and Commerce Senior College at village Bharaj Khurd. The village Bharaj and not Bharaj Khurd finds place in the perspective plan for the academic years 2019-2020 to 2023-2024 (5 years). In view of section 107(5) of the Maharashtra Public Universities Act, 2016, the University has to initiate a time bound programme to prepare an annual plan for every year for the location of colleges and institutions of higher learning, in consonance with the perspective plan. There is no dispute that not a single college has been allowed to start at Bharaj. The petitioner's proposal was forwarded with positive recommendations to

the Government. However, the Government received complaints as against the petitioner and consequentially, the petitioner was denied the letter of intent (LOI).

3. The petitioner approached this Court in writ petition no. 4847 of 2019. By order dated 06-01-2020, this Court dismissed the writ petition no. 4847 of 2019 filed by the petitioner along with writ petition no. 3726 of 2019 filed by Swargiya Harivanshrai Bachchan Bahuuddeshiya Seva Bhavi Sanstha Paradh (Bk.) and writ petition no. 2964 of 2019 filed by Shri Chatrapati Shivaji Shikshan Sanstha Bhokardan, concluding that due to the absence of location in the particular annual plan, the claim of the petitioners cannot be considered on it's merits. As such, the petitions were dismissed on merits and the petitioner herein was granted liberty to initiate steps with regard to deletion of place Bharaj from the perspective plan.

4. The learned Advocate for the University submits that Bharaj has not been deleted from the perspective plan, which is for a period of 5 years. It is only that, the university realized that there were several colleges in the vicinity of Bharaj and, therefore, the said location was not continued for the subsequent academic years.

5. The learned AGP has drawn our attention to paragraph nos. 7, 8 and 9 of the affidavit-in-reply filed by Dr. Ranjitsingh Krishnarao Nimbalkar, Joint Director, Higher Education, Aurangabad Region, Aurangabad, dated 08-12-2021, in which it has been stated as under :-

“7. I say and submit that, the Government received complaint and as per the complaints received for the place at Bharaj Tq. Jafrabad Dist. Jalna and taking into consideration the existence of 05 Senior Colleges nearby the proposed college of the petitioner i.e. for distance of 5 k.m. 13, K.M. and 21 k.m., the Government took decision not to grant Letter of Intent to any Institute to start new College for the place at Bharaj. The Government vide its letter dated 07.02.2019 has informed the concerned University to communicate the decision taken by the Government to the petitioner/Institute.

8. I say and submit that the petitioner's contention in the instant petition is that in spite of inclusion of name of village Bharaj Tq. Jafrabad, Dist. Jalna in the 5 years Perspective Plan i.e. for the academic year 2019-20 to 2023-24, the name of place Bharaj, Ta. Jafrabad, Dist. Jalna was not included in the perspective plan for the academic year 2020-21. In this regard I say and submit that the Hon. High Court Bench at Nagpur in Writ petition No. 5768 of 2010 and other writ petitions has observed on 13.12.2010 in the context of Section 82 of the Maharashtra Universities Act, 1994 as under:-

“It would now be necessary to consider whether the respondent state could be directed to consider the old proposals of the petitioners for grant of permission from the academic session 2010-11. It may be noted that under the provisions of Section 82 of the Act, the university is required to prepare a perspective plan and also update it every year, if

necessary. This shows that the perspective plan may be subjected to certain modifications every year. The applicant desirous of opening a new college / institution or higher learning is required to make an application in that regard to the University before 31st of October of the preceding year from which the permission is sought. The university is required to forward the recommendation to the State Government before 31st of December of the same year in which the applications are made. The university is required to consider numerous factors while testing the eligibility of the applicant and before recommending its name to the State Government for grant of permission from the next academic year. The University is required to consider whether the application is in conformity with the latest perspective plan prepared by the University. Thus, it is clear that relevant year that the University is required to consider the position existing during that relevant year. In such circumstances, it is rightly submitted on behalf of the respondents that in view of the procedure laid down by the provisions of Section 82 of the Act of 1994, the proposals submitted by the petitioners in the year 2006, 2007, 2008 and in the first couple months of 2009 cannot be considered by the State Government for grant of permission from the academic session 2010-11 and the petitioners would be required to re-apply in case they are desirous of opening new institutions.”

9. I say and submit that as per the observations of the Hon. High Court, provisions of section 82 of the then

Maharashtra Universities Act 1994 and Section 107 of Maharashtra Public Universities Act 2016 it is clear that the University has to upgrade its perspective plan every year and accordingly the proposals is to be called. The Government as per the point shown in the perspective plan and if the Instructions are fulfilling the norms laid down by the Government may grant permission. If the proposal is rejected such Institute may submit its proposal for next year as per the perspective plan.”

6. The learned Advocate for the petitioner submits, on instructions, that the petitioner desires to pursue this petition for inclusion of Bharaj despite the affidavit of the Government that there are 5 senior colleges already existing near the proposed college within a distance of 5 Kms to 21 Kms. It was specifically for this reason, that the Government has not issued the Letter of Intent to avoid unhealthy competition.

7. In view of the above, **Rule.**

8. Learned counsels for the respective sides waive service on Rule.

9. After the above order was dictated, the learned Advocate for the petitioner prayed for a pass-over, so as to take instructions.

10. After the matter was called out at the stroke of lunch recess, the learned Advocate for the petitioner submitted, on instructions, that the petitioner desires to withdraw this petition, so as to be able to make

a fresh application for starting an Arts, Science and Commerce Senior College at any location, as is decided under the perspective plan, within the jurisdiction of the Dr. Babasaheb Ambedkar Marathwada University, Aurangabad, in the future.

11. In view of the above, this petition is disposed off as withdrawn. We need not express any opinion on the desire of the petitioner, expressed above.

[S.G. MEHARE, J.]

[RAVINDRA V. GHUGE, J.]

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