

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

986 WRIT PETITION NO. 9155 OF 2020

Gurukul Bahuuddeshiya Sevabhavi Pratishthan,
Waghalgaon, Post: Pimpalegaon (Gangdeo),
Tq.: Phulambri, Dist.: Aurangabad
Through its President Shri Bhausahab
Narayan Gadekar, Age: 40 Yrs.,
Occ.: Service, R/o.: Waghalgaon,
Tq.: Phulambri, Dist.: Aurangabad..**Petitioner**

VERSUS

1. The State of Maharashtra,
Through the Principal Secretary,
Higher & Technical Education Department,
Mantralaya, Mumbai 400 032
2. Dr. Babasaheb Ambedkar Marathwada University,
Aurangabad, Through its Registrar
3. Aadarsha Education Society, Ambhai,
Tah.: Sillod, Dist.: Aurangabad,
Through its President
Mr. Abdul Sameer s/o Abdul Sattar
4. Hindusthan Education Society,
Andhari, Tah.: Sillod, Dist.: Aurangabad,
Through its President
Dr. Ajiz Noor Mohd. **.. Respondents**

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Advocate for Petitioner: Mr. Ajay S. Deshpande
I/c. G. P. for Respondent No. 1: Mr. D. R. Kale
Advocate for Respondent No. 2: Mr. S. S. Tope
Advocate for Respondent No. 3: Mr. A. S. Sakhare
Advocate for Respondent No. 4: Mr. V. D. Sapkal,
Senior Advocate i/b. Mr. S. R. Sapkal &
Mr. A. B. Chormal

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AND

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986 WRIT PETITION NO. 6936 OF 2021

Rajarshi Shahu Education Society's
Yeshwantrao Chavan College of Arts, Commerce,
Science, Sillod, Tal. Sillod,
Dist. Aurangabad
Through its Secretary
Dr. Rahul Prabhakarrrao Palodkar
Age: 37 years, Occu: Service,
R/o: Sillod, Tal.: Sillod,
Dist.: Aurangabad **..Petitioner**

VERSUS

1. The State of Maharashtra,
Through Secretary,
Higher & Technical Education Department,
Mantralaya, Mumbai-32
2. Director of Higher Education
Pune, Tal & Dist. Pune
3. Dr. Babasaheb Ambedkar Marathwada University,
University Camp, Aurangabad,
Through its Vice-Chancellor
4. Adarsha Education Society's
Dr. APJ Abdul Kalam Arts and Science
College, Aland, Tal. Phulambri,
Dist.: Aurangabad
Through its President
5. Adarsha Education Society's
Dr. APJ Abdul Kalam Arts and Science
College, Sillod, Tal.: Sillod,
Dist.: Aurangabad
Through its President
6. Adarsha Education Society's
Dr. APJ Abdul Kalam Arts and Science
College, Sarola, Tal.: Sillod,
Dist.: Aurangabad
Through its President

7. Hindustan Education Society Andhari,
National Arts and Science College,
Andhari, Tal.: Sillod, Dist.: Aurangabad,
Through its President .. Respondents

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Advocate for Petitioner:

Mr. Shailesh P. Brahme & Mr. A. R. Syed
I/c. G. P. for Respondents No. 1&2: Mr. D. R. Kale
Advocate for Respondents No. 4 to 7: Mr. V. D.
Sapkal, Senior Advocate i/b. Mr. S. R. Sapkal &
Mr. A. B. Chormal

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AND

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986 WRIT PETITION NO. 6942 OF 2021

Rajarshi Shahu Education Society's Sahakar
Maharshi Manikrao Palodkar Mahavidyalaya,
Ajintha, Tq. Sillod, Dist. Aurangabad
Through its Secretary
Dr. Rahul Prabhakar Rao Palodkar
Age: 37 years, Occu: Service,
R/o: Sillod, Tal.: Sillod,
Dist.: Aurangabad ..Petitioner

VERSUS

1. The State of Maharashtra,
Through Secretary,
Higher & Technical Department,
Mantralaya, Mumbai-32
2. Director of Higher Education
Pune, Tal & Dist. Pune
3. Dr. Babasaheb Ambedkar Marathwada University,
University Camp, Aurangabad,
Through its Vice-Chancellor
4. Indira Shikshan Prasarak Mandal
Society's Indira College of Arts
and Science, Ajintha, Tal. Sillod,
Dist. Aurangabad
Through its President .. Respondents

...

Advocate for Petitioner:

Mr. Shailesh P. Brahme & Mr. A. R. Syed
I/c. G. P. for Respondents No. 1&2: Mr. D. R. Kale
Advocate for Respondent No.3: Mr. S. S. Tope
Advocate for Respondent No. 4: Mr. V. D. Sapkal,
Senior Advocate i/b. Mr. S. R. Sapkal &
Mr. A. B. Chormal

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**CORAM: S. V. GANGAPURWALA &
R. N. LADDHA, JJ.**

DATE: 31st AUGUST, 2021

ORAL JUDGMENT (Per S. V. Gangapurwala, J.):

1. Rule. Rule returnable forthwith. With the consent of parties, petitions are taken up for final hearing.

2. The petitioners in all these writ petitions are running Arts, Commerce and Science colleges. The petitioner in Writ Petition No. 9155 of 2020 is running it's Senior College at Aland. The petitioner is challenging the Letter of Intent issued to the respondents for location at Andhari and Aland. In Writ Petition No. 6936 of 2021 the petitioner is running it's senior college at Sillod. It is within the limits of Municipal Council, Sillod. The petitioner is challenging the

Letter of Intent issued to the respondents for the locations at Aland, Sillod, Sarola and Andhari. In Writ Petition No. 6942 of 2021 the petitioner is running it's senior college at Ajintha and challenging the Letter of Intent issued to the respondent to run the senior college at Ajintha.

3. We have heard the respective learned Advocates for the petitioners, learned In-charge Government Pleader for the State and the respective learned Advocates and the Senior Advocate for the respondents-institutions granted Letter of Intent.

4. In all these matters where the Letter of Intent are issued to the respective institutions the University had given negative recommendations. In spite of the negative recommendations of the University the Letter of Intent is issued. The contention of the learned Advocates for the petitioners is that once the proposals are forwarded with the negative recommendations of the University the same has to be respected by the

Government and if they want to overrule the negative recommendations they can do so in exceptional circumstances and for the reasons recorded in writing. The reliance is placed upon Section 109 (3) (d) of the Maharashtra Public Universities Act, 2016 (*hereinafter referred to as "Act-2016"*). According to the petitioners, there are no reasons recorded in writing by the State Government nor exceptional circumstances existed for grant of Letter of Intent. According to the learned Advocate for the petitioners, the recommendations of Narendra Jadhav's Committee are accepted by the Government wherein the distance is required to be maintained between the colleges functioning. It is submitted that in rural areas there should be distance of 20 Kms. between two colleges, in hilly and tribal area the distance between two colleges should be 10 Kms. and in District place the distance has to be 4 Kms so also in partly city area distance has to be 5 Kms. The recommendations of the Narendra Jadhav Committee are accepted by the Government. They are

bound by the same. It is contended that Andhari and Ajintha are in hilly area. The learned Advocates submit that the requirement of reasons to be recorded cannot be merely illusory but has to be based on reasonable satisfaction. The learned Advocates rely upon the Judgment of the Madras High Court in case of **A. Mahalingam Vs. A. N. Ray and others dated 04.09.2018**. It is submitted that perspective plan is *sine qua non* for consideration of application for opening new college. The University had prepared the perspective plan however the Government interfered with the same and directed the University to change the locations in the perspective plan the same is not permissible.

5. According to Mr. Kale, learned In-charge Government Pleader the Government considered the need of the college in that particular regions and has issued Letter of Intent though negative recommendations were given by the University. The need for the colleges existed on the said locations as the colleges were to be started in

tribal area, hilly area. The need for opening the new college has been considered by the Government before issuing Letter of Intent to those colleges. The Government has exercised it's powers U/Sec. 109(3)(d) of the Act-2016. The discretion has been exercised in a proper manner. No *mala fides* can be attributed to the Government in that regard.

6. The learned In-charge Government Pleader further submits that all these colleges are granted Letter of Intent on permanent non-grant basis.

7. The learned Senior Advocate and the other Advocates for the institutions granted Letter of Intent submit that the locations where the Letter of Intent are issued to these respondents appeared in the perspective plan prepared by the University. The University had issued advertisement. Pursuant to advertisement, the proposals were filed for permission. Under Section 77 of the Act-2016, it is the functional duty of the Commission to prepare guidelines for

perspective plan of 5 years for each University for the location of colleges and institutions of higher learning in a manner ensuring equitable distribution of facilities for higher education. It also has the duty to approve a comprehensive perspective plan submitted by the University. The Commission is constituted U/Sec. 76 of the said Act. It is after following this procedure the perspective plan has been finalised and prepared by the University. Now, the petitioners cannot turn around and contend otherwise.

8. It is further submitted that *Ajinth*a and *Andhari* are in hilly area. Certificate to that effect has been issued by the competent authority. It has considered need of colleges in this hilly area and Letter of Intent has been issued. In respect of Letter of Intent at other places also the need has been considered. The Government has exercised its powers and discretion legitimately and reasonably U/Sec. 109(3)(d) of the Act-2016. No illegality has been committed. It would be a case of fair competition. The petitioners do not

have locus to assail the Letter of Intent issued to the respondents only on the ground that the number of students in their institutions may be decreased.

9. We have considered the submissions canvassed by the learned Advocates for the parties.

10. It is not disputed that in all these matters the Letter of Intent are issued by the State Government despite the negative recommendations of the University. The negative recommendations were given by the University on the premise that (I) The proposals lack basic infrastructure, (II) The need for the college does not exist, (III) The students of that locality would not suffer if permission is not granted and (IV) The requirements of Annexure "B" to Government Resolution dated 15.09.2017 are not complied with. The Government, it appears, has processed all these proposals in spite of the

negative recommendations and the Letter of Intent are issued by the Government.

11. The Government is bestowed with the power to grant Letter of Intent in spite of negative recommendations by the University under proviso to Clause (d) of Sub-section (3) of Section 109 of the Act-2016. Clause (d) of Sub-Section 3 of Section 109 with its proviso reads thus-

"109. Procedure for permission for opening new college or new course, subject, faculty, division.-

(1)...

(2)...

(3)...

(a)...

(b)...

(c)...

(d) out of the applications recommended by the University, the State Government may grant a Letter of Intent on or before 31st January of the immediately following year after the recommendations of the University under clause (c). The Letter of Intent may be granted to such institutions as the State Government may consider fit and proper in its absolute discretion, taking into account the relevant factors, the suitability of the management seeking Letter of Intent, state level priority with regard to location of institutions of higher learning, etc. The Letter of Intent shall be communicated by the State Government to the University, on or before the date specified in this clause:

Provided, however, that in exceptional cases and for the reasons to be recorded in writing any application not recommended by the University may be approved by the

*State Government for grant of a Letter of Intent to college or institutions of higher learning;
..."*

12. The learned In-charge Government Pleader has produced for our perusal the original file in the sealed cover. The same has been opened in the presence of parties. Upon perusal of the file it transpires that individual reasons are not recorded. It is only recorded that considering the educational need and the demand the Letter of Intent are issued. Apart from the same we do not find any reason mentioned in the file. No separate reasons are given while issuing Letter of Intent to individual institution for particular location. Composite reason appears to have been given while issuing the Letter of Intent to more than 60 to 65 institutions that Letter of Intent are issued considering the demand and the educational need.

13. The Government can exercise the powers in exceptional circumstances and for the reasons to be recorded in writing while approving the proposal for grant of Letter of Intent to the

college or the institution of higher learning though not recommended by the University.

14. The general rule appearing in Section 109(3)(d) is that out of applications recommended by the University the State Government may grant Letter of Intent. Proviso to Clause (d) of Sub-Section 3 of Section 109 carves out an exception viz. in exceptional cases the Government may grant Letter of Intent though not recommended by the University for the reasons to be recorded in writing. According to *Webster's International Dictionary of English Language* "Exceptional which is itself an exception and so is out of ordinary, that is, exceptional, to which exception may be taken." According to *Murray's New English Dictionary* Exceptional means "of the nature of forming exception; out of the ordinary course, unusual, special." The Government has to arrive at the conclusion that exceptional circumstances exist to overrule the negative recommendations of the University. The University while negating the proposals of the respondents amongst other

objections had observed that students of the region would not suffer. The Government while considering such proposal ought to have arrived at subjective satisfaction based on objective assessment that exceptional circumstances still exist for establishing new college on the said location for the welfare of the students. The same ought to be supported by relevant statistics.

15. For meeting out an exceptional case strong reasons have to be recorded in writing that would outweigh the negative recommendations of the University. The rule requiring recording of reasons must be observed in letter and spirit. Mere pretence of compliance by vague and general words is not enough. Reasons are the lifeline of any order. The order should reflect the application of mind of the authority while passing the order and it is the reasons which would depict the same. The obligation to record reasons operates as a deterrent against the possible arbitrary action. Reasons are link between the materials on which certain conclusions are based

and the actual conclusion. Reasons discloses how the mind is applied to the subject matter for a decision. The reason should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable. In the present case the reasons recorded should demonstrate carving out an exceptional case to be considered though negatively recommended by the University.

16. In the present case, we do not find that the Government has considered each and every proposal independently threadbare as an exceptional case. If the Government considers the proposals negatively recommended by the University without adhering to the proviso to Clause (d) of Sub-Section 3 of section 109 of the Act-2016, then the proviso would loose its efficacy as an exception to general rule and would be rendered superfluous and a dead letter. In the present matter, we do not find the said exercise carried out meticulously by the Government. At least

perusal of the file produced by the learned In-charge Government Pleader does not depict so. It has been observed by the Hon'ble Apex Court in case of *Gurdial Singh Fijji Vs. State of Punjab* reported in (1979) 2 SCC 368 that rubber-stamp reason is not enough. In another Judgment of the Hon'ble Apex Court in case of *S. N. Mukherjee Vs. Union of India* reported in (1990) 4 SCC 594 it has been observed that recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

17. The State was exercising its statutory power. The proviso to Clause (d) of Sub-Section 3 of Section 109 of the Act-2016 mandates the State Government to exercise its powers in exceptional case and for the reasons to be recorded in writing. An order passed exercising its powers under proviso to Clause (d) of Sub-Section 3 of Section 109 of the Act-2016 without recording appropriate and valid reasons would tantamount to arbitrary exercise of powers. Arbitrariness is

antithesis to the rule of law, justice, equity, fair-play and good conscience. An arbitrary action cannot be sustained. Arbitrariness has no role in society governed by rule of law.

18. As observed supra, the State Government cannot exercise its discretion unless exceptional circumstance exists and that to for the reasons to be recorded in writing.

19. As in the present case such exercise is lacking, the Letter of Intent issued in favour of the respondents cannot be sustained and as such Letter of Intent issued in favour of the respondents are set aside.

20. The Government may if it so desires and if the same is permissible as per the statute reconsider the proposals strictly adhering to the norms laid down in proviso to Clause (d) of Sub-Section 3 of Section 109 of the Act-2016.

21. The original file produced by the learned In-charge Government Pleader is returned to the learned In-charge Government Pleader.

22. Rule accordingly made absolute in above terms.

23. Writ Petitions are accordingly disposed of. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

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