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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 2081 OF 2020

Anjuman Moinut Tulba
Through Ziyaurrehman Mohammed Ishaque ... Petitioner

V/s.

The State of Maharashtra,
Higher and Technical Education Deptt. and Ors. ... Respondents

with
INTERIM APPLICATION (St.) NO. 6599 OF 2021
in
WRIT PETITION NO. 2081 OF 2020

Seraj Ahmed Md. Mustafa Dular
Hon. Secretary, Anjuman Moinut Tulba ... Applicant

V/s.

The State of Maharashtra,
Higher and Technical Education Deptt. and Ors. ... Respondents

Mr. Y.H. Muchhala, Senior Advocate with Musaddique Momin and
Mohd. Taha i/b. Judicare Law Assoc. for the Petitioner

Mr. Rajendra Anbhule for the Respondent 2
Mr. N.R. Bubna for Respondent 3
Mr. P.N. Diwan, AGP for the State

***CORAM : NITIN JAMDAR &
C.V. BHADANG, JJ.***

DATE : 18 MARCH 2021

P.C.:

This Petition challenges the order dated 31 January 2020, whereby letter of intent to start a new college at Malegaon is granted to the Respondent No.3 – Education Society, and the application of the Petitioner is not considered.

2. The primary contention of the Petitioner is that the impugned order is unreasoned and even after giving liberty to the Respondent – State to place the reasons on record, no reasons have been given to support the impugned order, and the impugned order be quashed.

3. A notification was issued by the University – Respondent No.2 for the prospective plan for the year 2018-19 for opening new colleges, including at Malegaon. The Petitioner applied with necessary documentation for opening a new college of higher learning. The Respondent No.3 also applied. The Committee constituted by the Respondent No.2 recommended the name of the Petitioner to the Respondent No.1 - Higher and Technical Education Department of the State of Maharashtra. Thereafter, the impugned order came to be passed on 31 January

2019 by the Respondent No.1 whereby letter of intent was granted to the Respondent No.3. This order is impugned.

4. We have heard Mr. Muchhala, learned Senior Advocate for the Petitioner, Mr. Anbhule, learned Counsel for Respondent No.2, Mr. Bubna, learned Advocate for Respondent No.3 and Ms. Diwan, learned Additional Government Pleader for the State. By order passed in this Petition on 28 February 2020, the Division Bench directed the Respondents to file the reply affidavit. Reply affidavit is filed by the Respondent No.3 and by the Respondent No.1 - Joint Director of Higher Education, Pune.

5. First we deal with the preliminary objections raised by the Respondent No.3 that the Petition is filed by one Ziyaurrehman Mohammed Ishaque claiming to be the Chairman of the Petitioner – Trust but he is not the Chairman and therefore, the Petition should not be entertained. To which sur-rejoinder is filed on behalf of the Petitioner stating that Ziyaurrehman Mohammed Ishaque has been authorized in the meeting of Governing Council of the Petitioner – Trust on 12 October 2016 and the resolutions have been passed. A Civil Application on behalf of the Secretary to be impleaded as a Petitioner is also filed. There is no dispute raised before us by any member of the Petitioner - Trust disputing the authority of the deponent of the Petition. The fact that the Petitioner – Trust had applied for permission to open a new college is not in dispute.

Though it is not necessary for us to allow the Civil Application to bring the Secretary on record, the fact that the Secretary has filed a Civil Application in addition to the sur-rejoinder, is sufficient enough to recognize the locus of the deponent to pursue the matter on behalf of the Petitioner.

6. The impugned order is challenged primarily on the ground of lack of reasons in the order and arbitrariness in decision making. Reliance is placed by the Petitioner on the decisions of this Court in the case of *Digitech Krida Vikas Sanshodhan Va Shikshan Bahuuddeshiya Sanstha, Sindi (Railway) v/s. State of Maharashtra and Anr.*¹ and *Shetkari Shikshan Prasarak Mandal Ashti, Dist. Beed v/s. State of Maharashtra and Ors.*². It is contended that even after the Division Bench on 28 February 2020 directed the State to file an affidavit-in-reply to disclose the reasons, no reasons have been disclosed. The learned AGP has supported the impugned order. The learned Counsel for the Respondent No.3 states that the permission has been given to the Respondent No.3 rightly and on merits the Respondent No.3 has a good case.

7. Section 109 of the Maharashtra Public Universities Act, 2016 lays down the procedure for permission for opening new colleges, courses, subjects, faculties and divisions. Relevant part of the Section is reproduced below thus :-

¹ 2011(1)Mh.L.J.

² 2002(1)Mh.L.J.

“109.(1)

(g)after considering the report of the university under clause (f), the State Government may grant final approval to such management as it may consider fit and proper in its absolute discretion, taking into account the State Government’s budgetary resources, and other relevant factors, the suitability of management seeking permission to open new institution, etc. The final approval under this clause may be granted on or before 15th June, of the year in which such new college or institutions are proposed to be started. Such approval from the State Government shall be communicated to the university. Approvals granted thereafter shall be given effect by the university only in the subsequent academic year:

Provided however that, in exceptional cases and for the reasons to be recorded in writing any compliance report on the Letter of Intent, which is not recommended by the university, may be approved by the State Government.”

8. The reply affidavit filed by the Respondent No.1 refers to Section 109 and the Government Resolution dated 15 September 2017. In support of the decision, the reply states as under :

“I say that for the academic year 2020-21, the said Savitribai Phule University, Pune submitted to the State Government, total 4 proposals. However, as per the perspective plan of the said University, for the academic year 2020-2021, at Taluka Malegaon, there is provision for only one college.

I say that pursuant to Section 109(3)(d) of the

Maharashtra Public Universities Act, 2016, the State Government in its absolute discretion and taking into consideration

- I. Education and social status*
- II. Experience and reputation in academics*
- III. Quality of project reports submitted by the institute*
- IV. Financial capacity*

noticed that Respondent No.3 institution is in a better position than that of the Petitioner.

Hence, Letter of Intent was issued by the State Government in favour of Respondent No.3.”

These are the only reasons stated in the affidavit-in-reply. It is also stated that Section 109(3)(d) of the Act of 2016 vests absolute discretion in the State and to consider the four parameters which have been illustrated. Impugned order gives no reasons, and only granted permission to Respondent No.3. Nothing is thus disclosed as to why the application of the Petitioner was rejected.

9. The ambit of discretion of the State Government to grant permission to open new colleges under the erstwhile Act i.e. the Maharashtra Universities Act, 1994 had come up for consideration in the cases of *Digitech Krida Vikas Sanshodhan and Shetkari Shikshan Prasarak Mandal*. Section 82 of the Act of 1994, which is in *pari materia* with Section 109 of the Act of 2016, was under consideration of the Division Bench. Interpreting Section

82(5), the Division Bench in *Digitech Krida Vikas Sanshodhan* emphasized on the need to give reasons. The Division Bench held that without reasons, it is not possible to read the mind of the State Government as to why the applications are granted or rejected. In the absence of reasons, the order was set aside on the ground of breach of principles of natural justice. The Division Bench directed the State Government to decide the application afresh on its own merits with a reasoned order. Identical question also arose in the case of *Shetkari Shikshan Prasarak Mandal* where challenge was raised on the ground that there was lack of element of fair play and there were no reasons for rejection. Accepting the challenge, the Division Bench construing Section 82(4) of the Act of 1994 observed that the State and Universities had to act fairly and pass orders with reasons.

10. The law laid down by this Court in the case of *Digitech Krida Vikas Sanshodhan and Shetkari Shikshan Prasarak Mandal* is clearly applicable to the case at hand. The impugned order only grants permission to the Respondent No.3. It gives no indication whatsoever as to why the application of the Petitioner was not considered. It was expected when the Division Bench directed the Respondent – State to file reply that the reasons will be placed on record. The deponent of the affidavit has misconstrued ‘absolute discretion’ to mean no reasons need to be disclosed. The conduct of the Respondent – State in this matter is contrary to the legal position which is already settled by this Court.

11. Since no reasons as to why the impugned order was passed are placed before us, we are inclined to set aside the impugned order and direct the State Government to transmit the proposal in respect of opening a college at Malegaon and make a scrutiny of the proposals afresh in accordance with provisions of law.

12. In these circumstances, the Petition succeeds. The impugned order dated 31 January 2020 granting permission to the Respondent No.3 to open a college at Malegaon is quashed and set aside. The proposal of the Respondent No.3 and the Petitioner are restored to be considered afresh by the Respondent No.1 strictly in accordance with provisions of law within a period of eight weeks. We leave the question as to whether to continue with the same plan for the next academic year, as well, to the State Government.

13. The Writ Petition is disposed of. Interim Application also stands disposed of.

C.V. BHADANG, J.

NITIN JAMDAR, J.