

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

933 WRIT PETITION NO.9167 OF 2021

BHAIRAVNATH SHIKSHAN KRIDA VA SAMAJ SEVA MANDAL, THR.
ITS PRESIDENT DHANANJAY ASHOK MUKHEKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioner : Mr.Ankush N. Nagargoje
AGP for Respondent Nos.1 to 3 : Mr.P.S.Patil
Advocate for Respondent No.4 : Ms.Vaishali D. Jadhav

**CORAM : RAVINDRA V. GHUGE &
SANDIPKUMAR C. MORE, JJ.**

DATE : 8th June, 2022

PER COURT:-

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

“A) For a writ of certiorari, order or direction in the nature of certiorari, calling for the record and proceeding of the order dated 12.07.2021 **(Exhibit ‘G-1’)** passed by the respondent No.1 thereby rejecting the petitioner’s proposal dated 31.12.2020 **(Exhibit ‘C’ Colly.)** filed for grant of Letter of Intent to start Women’s Senior College in the faculty of Arts, Commerce and Science at Aurangabad may kindly be quashed and set aside.

B) For a writ of mandamus, order or direction in the nature of mandamus, directing the respondent Nos.1 and 4 to consider the petitioner’s proposal dated 31.12.2020 **(Exhibit ‘C’ Colly.)** filed for grant of Letter of Intent to start Women’s

Senior College and grant Letter of Intent and final permission in favour of petitioner to start Women's Senior College in the faculty of Arts, Commerce and Science at Aurangabad.

C) For a writ of mandamus, order or direction in the nature of mandamus directing the respondents herein not to take any steps to grant any permission in favour of other Institutions to start Women's Senior College in the faculty of Arts, Commerce and Science at Aurangabad and permission, if any granted at said place in favour of other Institutions may kindly be quashed and set aside by any manner whatsoever."

2. The proposal of the petitioner to start a Women's Senior College in the faculties of Arts, Commerce and Science, at Aurangabad, has been rejected vide the impugned order dated 12th July, 2021, issued by respondent No.1.

3. The following factors are undisputed :-

a) Respondent No.4 University prepared and sanctioned its perspective plan for the academic year 2021-2022.

b) Two Women's Senior Colleges in the faculties of Arts, Commerce and Science, found space in the perspective plan.

c) In December, 2020, respondent No.4 called for proposals/applications from interested Institutions for the grant

of Letter of Intent (LOI) to start such Senior College.

d) The petitioner was the only applicant who tendered it's proposal for starting the Women's Senior College.

e) The University forwarded the proposal to the Competent Authority with positive remarks.

f) By a communication dated 27th January, 2021, the Dean of the concerned Department of the University directed the petitioner to submit the copy of the rent agreement which would indicate that a building is available to house the said faculties. Annexure-B to the said communication indicates that, barring the requirement of a date on the rent agreement already submitted, there was no objection raised against the proposal tendered by the petitioner.

g) The petitioner has placed on record before the Competent Authority, a copy of the rent agreement between the Chairman of the petitioner and the landlord.

h) The impugned order dated 12th July, 2021, addressed by the State to the Registrar of the University indicates that the

petitioner was denied the LOI since the rent agreement indicates that the landlord and the chairperson of the petitioner are signatories/parties.

4. We have perused Section 109 of the Maharashtra Public Universities Act, 2016, which reads as under :-

“109. Procedure for permission for opening new college or new course, subject, faculty, division :

(1) The proposal for opening of new colleges or institutions of higher learning or for starting new courses of study, subjects, faculties, additional divisions or satellite centers, shall be invited and considered by the university.

(2) No application for opening a new college or institution of higher learning, which is not in conformity with the perspective plan prepared under section 107 shall be considered by the university.

(3)(a) The Management seeking a Letter of Intent for opening a new college or institution of higher learning shall apply in a prescribed format to the Registrar of the university before the last day of September of the year preceding the year in which the Letter of Intent is sought;

(b) only those applications complying with the requirements and received within the prescribed time limit, shall be accepted and considered by the university;

(c) all such applications received within the aforesaid prescribed time limit, shall be scrutinized by the Board of Deans and be forwarded to the State Government with

the approval of the Management Council on or before 30th November of the year in which such application is received by the university. The university shall submit alongwith the application, its recommendation, duly supported by relevant reasons, as are deemed appropriate by the Management Council;

(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;

Provided further that, for the first academic year, immediately after the commencement of this Act with a view to facilitate the Universities to decide the applications for permission for opening of new College the dates referred to in clause (a), (c) and (d) of sub-section (3) as specified in column (2) of the Table hereto shall be read as provided in column (3) of the said Table :-

Table

<i>Clauses (1)</i>	<i>For the date existing provision (2)</i>	<i>Date for the Academic Year 2017-18 (3)</i>
<i>(a)</i>	<i>Last day of September of the Year.</i>	<i>15th December 2017.</i>
<i>(c)</i>	<i>Before 30th of November of the year.</i>	<i>Before 15th January 2018.</i>
<i>(d)</i>	<i>Before 31st January of the immediately following year.</i>	<i>Before 28th February 2018.</i>

(e) such Letter of Intent granted by the State Government shall be valid up to 31st January of the next following year. The management shall have to comply with the necessary conditions mentioned in the Letter of Intent, within such period and submit compliance report to the university with the present status of the academic and infrastructure facilities and readiness to start the institutions with required documents for final approval;

(f) Such compliance report received within aforesaid time-limit, shall be scrutinized by the Board of Deans and be forwarded to the State Government with the approval of the Management Council on or before, 1st day of May in which the compliance report has been received. The recommendation of the Board of Deans and approved by the Management Council shall be duly supported by relevant reasons as are deemed appropriate by Management Council:

Provided that, if the management fails to comply with the conditions of Letter of Intent, within the time limit as specified in clause (e), the Letter of Intent shall be deemed to have been lapsed:

Provided however that, in exceptional cases and reasons to be recorded in writing, the State Government may, on application by the management duly processed by the university, extend from time to time, the validity of Letter of Intent for further period which shall not exceed twelve months in the aggregate;

(i) Provided further that, for the academic year 2021-2022, the compliance report received by the University within the prescribed time limit, shall be scrutinized by the Board of Deans and be forwarded to the State Government with the approval of the Management Council on or before 31st July 2021;

(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.

(i) Provided further that, for the academic year 2020-2021, with a view to extend the date of forwarding the compliance reports received from management to the State Government and the last date to grant the final approval to start the new College or

Institution by the Government, for the academic year 2020-2021, the dates referred to in clauses (f) and (g) of sub-section (3), as specified in column (2) of the Table hereto, shall be read as provided in column (3) of the said Table :-

<i>Clauses (1)</i>	<i>Date in existing provision (2)</i>	<i>Date for Academic Year 2020-21 (3)</i>
<i>(f)</i>	<i>On or before 1st day of May</i>	<i>On or before 30th June 2020</i>
<i>(g)</i>	<i>On or before 15th June</i>	<i>On or before 31st July 2020</i>

(4)(a) The management seeking permission to start a new course of study, subjects, faculties, additional divisions or satellite centers shall apply in a prescribed format to the Registrar of the University before the last day of the September, of the year preceding the year in which the permission is sought;

(b) only those applications complying with the requirement and received within the prescribed time limit shall be accepted and considered by the university;

(c) all such applications received within the aforesaid prescribed time limit, shall be scrutinized by the Board of Deans and be forwarded to the State Government with the approval of Management Council on or before the 1st day of April of the year, with such recommendation duly supported by relevant reasons as are deemed appropriate by the Management Council;

(d) out of the applications recommended by the university, the State Government may grant permission on or before 15th June of the year to such institutions as it may consider fit and proper in its absolute discretion, taking into account other relevant factors,

the budgetary resources of the State Government and other relevant factors, the suitability of the management seeking permission, etc. The permission 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.

(2) Provided further that, for the academic year 2020-2021, the State Government may grant permission to start the new course of study, subjects, faculties, additional divisions, etc. on or before 31st July 2020 to such Institution as it may consider fit and proper.

(5) No application shall be entertained directly by the State Government for grant of Letter of Intent, under sub-section (3) or final approval under sub-section (4), as the case may be.

(6) The application for starting new course of study, subject, faculty or additional division or satellite center by existing colleges or institutions of Higher learning, shall not be forwarded to the State Government by the university, if,-

(a) they have not been accredited or re-accredited either from National Assessment and Accreditation Council or National Board of Accreditation even though they are eligible and due for being accredited or re-accredited as per the norms of accreditation agencies; and

(b) they have not complied with the conditions laid down by the State Government.

(7) Notwithstanding anything contained in this Act or any other law for the time being in force,

(a) no management shall establish or open a new college or an institution of higher learning in the State, except with the prior permission of the State Government;

(b) no management shall start a new course of study or subjects, faculty, additional division or satellite centers except with the prior permission of the State Government.

Explanation : For the purpose of this sub-section, the expressions "establish or open a new college or an institution of higher learning" and "start a new course of study, subject, faculty, additional division or satellite center" shall include establishing or opening of such college or institution of higher learning, and starting of any such course of study, subject, faculty, additional division, or satellite center, on the basis of no grant-in aid from the State Government.

(8) In case of extraordinary situations which warrant starting of new divisions of particular faculties, the State Government, with reasons to be recorded in writing, shall have the authority to declare and adopt the fast track system of grant of permission to start such new divisions and the norms and procedures related thereto:

Provided that, the procedure for grant of permission in such extraordinary situations shall be completed not later than 31st August of the Academic Year in which such new divisions are to be started:

Provided further that, the applications for starting of new divisions under the fast track system shall be duly processed by the university. On the compliance of necessary conditions, if the University recommends to the Government the proposal

for starting such new divisions, then such permission shall be deemed to have been accorded by the State Government if no adverse communication of any nature is issued by the State Government up to 31st August of the Academic Year in which such new divisions are to be started.

(9) The State Government, for the purpose of giving effect to the provisions of sub-section (3) or sub-section (4), as the case may be, may by notification in the Official Gazette, lay down the procedure to be followed for the purposes under the said sub-sections."

5. The learned Advocate for the petitioner submits that the rent agreement placed on record is indeed between the Chairperson and the landlord. The chairperson has taken the said property on rental basis for and on behalf of the petitioner establishment. He agrees that it would have been more appropriate to have such a rent agreement between the petitioner establishment and the landlord instead of the chairperson signing the same as it has created a picture that he is a party to the rent agreement in his personal capacity. It is assured that not an inch of the property would be utilized for any private purpose and the same would be utilized only for the new Senior College in the three streams.

6. It is apparent from Section 109 of the Maharashtra Public Universities Act, 2016, that grant of LOI would not mean that the petitioner has been granted recognition and final approval.

Follow up action is to be taken and the necessary requirements as prescribed under the Act, are to be fulfilled. It is only a final approval in the form of recognition that would be granted to the petitioner, after the entire exercise is completed.

7. Considering the above, it is noteworthy that the lacuna was only on account of the impression created by the rent agreement that the Chairperson has signed the same in his personal capacity, which apprehension is put to rest by a solemn statement made before the Court.

8. We have perused the Government Resolution (GR) dated 15th September, 2017, which lays down the entire procedure for taking steps in relation to the Letter of Intent. Certain steps have to be initiated which include removal of all deficiencies. We do not find any controversy in this matter other than the deficiency recorded herein above in paragraph No.3(f). The process to be adopted under Section 109 of the Maharashtra Public Universities Act, 2016, has been reiterated in the said GR thereby making it mandatory for the completion of the said process before the recognition could be granted. It also provides that the management has to comply with the necessary conditions mentioned in the Letter of Intent within such period and submit compliance report to the University with the present status of the

academic and infrastructure facilities and readiness to start the institutions with required documents for final approval [Section 109 (3) (e)].

9. We are informed by the learned Advocate for the University that even today the perspective plan indicates the requirement of two Women's Senior Colleges for Arts, Commerce and Science faculties. The petitioner was the only applicant and today the said requirement still exists under the perspective plan.

10. This petition is, therefore, partly allowed. We direct respondent No.1 to issue the Letter of Intent to the petitioner on or before 30th June, 2022 since the learned AGP submits that though the deadline is 15th June, 2022, it will be difficult for respondent No.1 to ensure the issuance of a Letter of Intent before 15th June, 2022.

11. Needless to state that the requirements under the Maharashtra Public Universities Act, 2016 with regard to grant of approval/recognition to the said College would be subject to further follow up action as is prescribed in law.

(SANDIPKUMAR C. MORE)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE