

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3132 OF 2021

Nilaya Foundation ... Petitioner.
V/s.
The State of Maharashtra & Others ... Respondents.

Mr. Surel S. Shah, for the Petitioner.
Smt. P.J. Gavhane, AGP, for the Respondents-State.
Mr. Shankar S. Deshmukh, with Mr. R.V. Karkande for Respondent
No. 3.

CORAM : NITIN JAMDAR AND
AMIT BORKAR, JJ.

DATE : 11 JANUARY 2022.
(Through Video Conferencing)

P.C. :

By this writ petition, the Petitioner – Educational Trust intending to start a new college is challenging the order of Respondent No. 1 refusing permission to open a new college under sub-section (3) of Section 109 of the Maharashtra Public Universities Act, 2016 (“**the Act of 2016**” for short). Petitioner is further seeking a direction against Respondent No. 1 to approve its proposal for the establishment of Bachelor of Business Administration ("**BBA**") College according to the perspective plan of Respondent No. 2 – University. The Petitioner is also challenging the grant of final

approval in favour of Respondent No. 3 to open a new college.

2. Petitioner had applied for permission to open BBA college within the limits of the Pune Municipal Corporation as per Section 109 of the Act of 2016. Respondent No. 2 – University examined the proposal of the Petitioner and recommended the said proposal to Respondent No. 1 – State of Maharashtra. The Respondent No. 3 – Institution had also applied for setting up a new college in the same area, which was also recommended by Respondent No. 1 - University to Respondent No. 1 – State of Maharashtra.

3. Respondent No. 1, by order dated 8 July 2021, rejected the Petitioner's proposal holding that Petitioner is ineligible for the academic year 2021-2022 to set up a new college.

4. The Petitioner challenged the order dated 8 July 2021 by filing Writ Petition No. 2468 of 2021. However, this Court allowed Petitioner to withdraw said petition by observing that if any final approval is granted by the State Government in favour of Respondent No. 3 to establish BBA college at Pune, the same shall not be implemented for a period of one week from the date of such approval.

5. Respondent No. 1, by order dated 31 August 2021, granted permission to the Respondent No. 3 to open BBA college. Therefore,

the Petitioner is challenging Government Resolution dated 31 August 2021 granting final approval in favour of Respondent No. 3 and also seeking direction against Respondent No. 1 to give final approval in favour of the Petitioner for the establishment of BBA college.

6. Respondent No. 1 has filed a reply stating that the proposal of the Petitioner is not fulfilling Norm No. 13, which requires Petitioner to hold land admeasuring not less than 20 Are as an owner or lessee.

7. Respondent No. 3 has also filed a reply stating that the proposal of the Petitioner does not fulfil mandatory conditions as laid down in Government Resolution dated 15 September 2017, which requires the institute to hold land on an ownership basis or lease an area to the extent of not less than 20 Ares. It is further stated that the period of rent agreement executed in favour of Petitioner is from 1 June 2016 till 31 May 2021 and, therefore, the agreement cannot be said to be for more than five years.

8. We have heard learned Counsel for the parties. Mr. Surel Shah, learned Advocate appearing for the Petitioner, submitted that there are no reasons furnished by Respondent No. 1 while rejecting the proposal of the Petitioner. He submitted that the reasons should be contained in the impugned order itself and cannot be supplied by

affidavit in reply. He submits that the term of rent agreement expires in the year 2026 and, therefore, could not have rejected the proposal of the Petitioner on that ground. He submits that the word 'land' used in Government Resolution dated 15 September 2017 needs to be construed to include the area of constructed portion also. He, therefore, submitted that Petitioner is eligible as per Government Resolution dated 15 September 2017.

9. Per contra, Mr. Shankar Deshmukh and Smt. P.J. Gavhane, learned AGP supported the impugned Government Resolution granting final approval in favour of Respondent No. 3. They submitted that the registered rent agreement executed in favour of the Petitioner clearly states that the license period shall commence from 1 June 2016 and will end on 31 May 2021. They invited our attention to Schedule-A of the license agreement to show that the registered agreement does not indicate that land admeasuring 20 Are was transferred in favour of the Petitioner – Trust either as an owner or as a lessee. They submitted that the document affidavit-cum-indemnity annexed along with the registered license agreement could not form part of the registered agreement. Therefore, Petitioner has failed to demonstrate that it is eligible as per Government Resolution dated 15 September 2017.

10. We have carefully considered the submissions of the parties and perused the record, including Government Resolution dated 15

September 2017. Section 109 of the Act of 2016 provides the procedure for permission to open a new college or new course. The said provision contemplates a proposal to be filed with the concerned University, which must be in conformity with the perspective plan prepared under Section 107 of the Act of 2016. After the proposal of the management is scrutinized and recommended by the University, under clause (d) of sub-section (3) of Section 109 of the Act of 2016, the State Government may grant a Letter of Intent taking into consideration the relevant factors, including the suitability of management seeking Letter of Intent. Sub-section (9) of Section 109 gives power to the State Government to lay down the procedure to be followed to establish a new college. It appears that in accordance with the powers conferred under sub-section (9) of Section 109 of the Act of 2016, the State Government has laid down a procedure for opening a new college under Government Resolution dated 15 September 2017. Clause 13(2) of the said Government Resolution requires that the proposed institution shall have a registered agreement of lease in the name of the proposed institution for land admeasuring more than a half-acre at a place situated within the limits of A, B and C class Municipal Corporation. It also prescribes that the said agreement shall be for a minimum period of five years.

11. The first submission of the Petitioner that the impugned order does not reflect reasons for refusal of the proposal of the Petitioner is attractive at first blush. Still, if we consider the relief sought by the

Petitioner seeking a direction to approve his proposal, the Petitioner will have to show that the Petitioner is eligible in its own right. The Petitioner will have to establish his eligibility independently. We are, therefore, of the opinion that the Petitioner cannot succeed merely on the ground that the impugned order does not disclose reasons.

12. The second submission of the Petitioner that the term of the rent agreement is till 2026, which is beyond a period of five years. We have carefully considered the registered license agreement annexed to the petition. Clause 1 (b) reads as under:

“(b) Period:- The Period of the license shall be of 5 years from 1 June 2016 to 31 May 2021.”

Clause 3 of the agreement reads as under:

“3. TERM

The license is being granted by the Licensor to the Licensee for the period of Five years (60 months) commencing from 01.06.2016 to 31.05.2021 for carrying out its Activities at the license fees and terms and conditions provided herein.”

13. It is obvious that the period of five years will start from the date of submission of a proposal by the proposed institution. Neither the Petitioner nor respondents have placed on record the exact date of submitting a proposal by Petitioner. Initial advertisement calling for proposal of the new college was published by Respondent No. 2 University on 22 December 2020. The last date for sending a proposal for opening a new college was 31 December 2020. It is,

therefore, clear that the period of the rent agreement of the Petitioner expired on 31 May 2021, which is less than the minimum period of five years as contemplated under clause 13 of the Government Resolution dated 15 September 2017. We cannot countenance the submission on behalf of the Petitioner that the affidavit/indemnity annexed along with the registered agreement extends the period of rent agreement till 2026. The said annexure to the license agreement is not independently registered but is merely an annexure to the registered license agreement.

14. The last submission on behalf of the Petitioner that while construing the area of land as contemplated under clause 13 of the Government Resolution dated 15 September 2017, constructed portion of the building has to be included as an additional area of land. On a plain reading of clause 13 of the Government Resolution dated 15 September 2017, it is clear that the proposed institution shall have a minimum of 20 Ares of the area either as owner or as a lessee, which cannot include constructed portion over the land. Therefore, we are of the considered opinion that the Petitioner does not fulfil the requirement of holding 20 Are area as owner or lessee.

15. With the result, we hold that Petitioner has failed to establish his eligibility for opening a new college as per Government Resolution dated 15 September 2017.

16. There is no serious dispute about the eligibility of Respondent No.3

17. For the reasons stated above, there is no merit in the petition. The petition is, therefore, dismissed.

(AMIT BORKAR, J.)

(NITIN JAMDAR, J.)