

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

WRIT PETITION NO. 11832 OF 2022

Bhigwan Shikshan Prasarak Mandal
Versus
The State of Maharashtra & Ors.

...Petitioner.
...Respondents.

Mr. Laxman Deshmukh i/by Mr. Rupesh Zade for the Petitioner.
Mr. S. B. Kalel, AGP for the Respondent Nos. 1 & 2-State

**CORAM : NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ**

DATED : 6th DECEMBER, 2022

P.C.:

1. On 01/12/2022 this Court has recorded rival submissions of the parties to the petition. However adjourned the matter at the behest of learned AGP so as to enable him to take instructions. Learned AGP has stated that the Government is of the view that the matter be decided on merits.

2. Chapter-X of the Maharashtra Public Universities Act, 2016 (hereinafter referred to as "the said Act") provides for perspective plan. It is mandatory for the university like respondent no. 3 to prepare comprehensive plan for every 5 years, which is to be approved by the Commission. The plan is required to be prepared for the location of the colleges and institutions of higher learning so as to ensure the comprehensive equitable distribution of facilities for

higher education having regard to the need of unserved and under-developed areas. Such plan by each university like respondent no. 3 is restricted to its jurisdiction. The Board of Deans are statutorily duty bound to prepare such perspective plan and is required to be approved by the Academic Council, Senate through the Management Council.

3. Section 109 of the said Act lays down procedure for dealing with the permission in case of opening of new college or new course, subject, faculty, division. The proposal for opening of new college of higher learning are to be invited and considered by the university in accordance with the perspective plan u/s. 107 of the said Act.

4. The management like petitioner who intend to have Letter of Intent (hereinafter referred to as "LOI) for opening a new college or institution of higher learning is required to apply in prescribed format to the Registrar of the respondent no. 3-university before last day of September of the year preceding the year in which the LOI is sought. Such applications which are in adherence to the provisions of sub-sections 1 to 3 of section 109 are accepted and considered by the university.

5. If application for opening of new college by the management is in tune with sub-sections 1 to 3 of section 109 the Board of Dean of

respondent no. 3-university is required to scrutinize the same and forward it to the State Government with approval of Management Council by 30th November of the year in which they are received.

6. The respondent no. 3-university alongwith such application is required to submit its recommendation by recording supportive reasons as are deemed appropriate by the Management Council. Out of such applications which are recommended by the university, the State Government may grant LOI on or before 31st January of the immediate following year.

7. The State Government may grant LOI to the institution as the Government may consider fit and proper in its absolute discretion taking into account the relevant factors, the suitability of the management seeking LOI, state level priority with regard to location of the institution of higher learning etc.

8. In the case in hand having regard to the perspective plan under section 107, the respondent no. 3-university issued an advertisement calling applications from the management for the academic year 2022-23 for opening of new colleges. The petitioner since was interested in opening arts, commerce and science college at Bhigwan in Indapur taluka of Pune revenue district which is in the jurisdiction of respondent no. 3-University in compliance with Section 109 moved

application online on 29/04/2022 as against the advertisement dated 24/04/2022.

9. The respondent no. 3-university in compliance with the provisions of clause (c) of sub-section 3 of section 109 recommended the proposal of the petitioner for opening of new senior college vide its recommendation letter dated 20/06/2022. The respondent-State Government noticed certain shortfalls in the proposal of the petitioner i.e. non-availability of NAAC accreditation and directed the university vide its communication dated 04/08/2022 to comply with the shortfall.

10. In response to the aforesaid query raised by the State Government and the university, the petitioner has communicated the respondent no. 3-university that it has already applied for NAAC accreditation on 30/05/2022 and details of such application in the form of evidence were produced for its reference. Further an undertaking is given that the NAAC accreditation will be carried out expeditiously. An undertaking is furnished by the petitioner through its President on 05/08/2022 that such NAAC accreditation and evaluation certificate will be produced within a period of one year.

11. Learned counsel for the petitioner would urge that other similarly placed institutions who are not holding NAAC accreditation

are granted LOI under section 109 of the said Act and has relied on the cases of certain institutions as reflected in the decision of the government on 16/08/2022, 17/08/2022 and 01/09/2022. On perusal of the aforesaid decision what can be noticed is almost all the institutions in whose favour the permission is granted under section 109 are not holding NAAC accreditation or evaluation certificate. Almost all the institutions have furnished an undertaking that such certificate shall be produced as process of evaluation is already under way or like petitioner have applied for grant of NAAC accreditation.

12. In the aforesaid background, if we appreciate the case of the petitioner as compared to such other similarly placed institutions, as are reflected in the above referred Government decisions, it has to be inferred that the petitioner's case is identically and similarly situated as that of the educational institutions who are mentioned in the above referred Government order. As such, the petitioner inspite of being similarly placed is treated unequally in the class of equals without there being intelligible differentia. Such act on the part of the respondent-State Government does not stand to the scrutiny of test provided under Article 14 of the Constitution of India.

13. Even if the provisions of clause (d) of the sub-section 3 of

section 109 confers absolute discretion in the State Government, however, such discrimination is to be exercised with appropriate care and caution in the light of parameters which are provided therein. Amongst other, while issue of LOI in its discretion, the State Government is required to have regard to the relevant factors, the suitability of the management seeking LOI, State level priority, location of higher learning. The fact remains that the perspective plan u/s 107 is sanctioned and approved by the respondent no. 3-university. The State Government's approval has prompted the respondent no. 3-University invite applications from the interested managements like the petitioner to have LOI for opening new senior colleges. While exercising the discretion in the matter of dealing with the application from the management, the Government must take into account the principles of fair play, good conscious and equality. The State Government cannot adhere to unreasonable classification.

14. In case in hand inspite of recommendation from the respondent no. 3-University, the State Government while rejecting the prayer has acted indifferently with that of the petitioner though other similarly placed institutions are granted permissions under the very same provision.

15. We are informed that as against the advertisement no other

institution till this date is granted permission or LOI u/s. 109 of the said Act for the location for which petitioner has applied.

16. In view of above, this Court is left with no other option but to infer that the respondent-State Government has treated the claim of the petitioner with utmost discrimination without following principle of equality and equal protection guaranteed under Article 14 of the Constitution.

17. The only explanation which the respondent-State Government has furnished is, the petitioner proposal was lacking NAAC accreditation. However, once the similarly placed institutions on an undertaking are granted permissions and the petitioner has already furnished an undertaking that NAAC accreditation shall be produced within a period of one year, the order of refusing to issue LOI in favour of the petitioner cannot be said to be sustainable as same runs contrary to the very scheme of sections 107 and 109 of the said Act.

18. As such, action on the part of the respondent nos. 1 & 2 in not issuing the LOI to the petitioner for opening new college of arts, commerce and science at Bhigwan, Taluka-Indapur, District-Pune is declared to be illegal and bad in law. We direct the State Government to consider the proposal of the petitioner for opening new college

and accordingly issue LOI in tandem with the permissions granted to other similarly placed institutions as reflected in its orders dated 16/08/2022 and 17/08/2022.

19. The State Government must have had regard to an undertaking furnished by the petitioner of providing NAAC accreditation certificate within a period of one year as the petitioner has already started the process of getting NAAC accreditation/evaluation. We direct the State Government to communicate its decision in any case by 15/02/2023 to the petitioner as LOI will be made operational if so granted from next academic year 2023-24.

20. It is hereby clarified that the State Government shall not reject the proposal of the petitioner on the ground of want of NAAC accreditation certificate.

21. The petition stands allowed in above terms.

(SHARMILA U. DESHMUKH, J) (NITIN W. SAMBRE, J.)