

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 4217 OF 2021

Chhatrapati Shahu Maharaj Education Society,
New Panjra, Koradi, Ta. Kamptee, Dist. Nagpur,
through its President Shri Maroti Ramkrushna Wagh,
aged about 47 years, R/o 157, Ganesh Nagari, Koradi Road,
Bokhara, Nagpur – 441111.

PETITIONER

.....VERSUS.....

1. The State of Maharashtra,
through its Secretary, Department of Higher and Technical Education,
Mantralaya, Mumbai – 32.
2. The Rashtrasant Tukdoji Maharaj Nagpur University,
Nagpur, through its Registrar, Nagpur.

RESPONDENTS

Shri A.I. Sheikh, Advocate for the petitioner.
Shri D.P. Thakare, Additional Government Pleader for respondent No.1/ State.
Shri P.K. Rahulkar, Advocate for respondent No.2.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI - PHALKE, JJ.

DATE : 6/10/2022

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The challenge raised in this Writ Petition is to the order dated 20/8/2020 issued by the Higher Technical Education Department of the State of Maharashtra thereby refusing to grant final approval to the petitioner – Society to start a degree college pursuant to the letter of intent issued earlier.

3. The Society with a view to start a womens college in the faculty of Arts, Commerce and Science took necessary steps for being issued the letter of intent in terms of the prescribed procedure under the Maharashtra Public Universities Act, 2016 (for short “the Act of 2016”). Accordingly on 31/1/2019, the letter of intent was issued to the Society under Section 109(3)(d) of the Act of 2016. Thereafter, on 26/12/2019, the Society was informed by the Rashtrasant Tukadoji Maharaj Nagpur University that necessary documents along with the proposal be submitted so as to consider the grant of final permission. The Society on 6/1/2020 submitted the requisite documents along with the proposal to the University. The Expert Committee appointed by the University inspected the proposed building where the College was to be started and submitted its report on 8/6/2020. On 3/7/2020, the University positively recommended the case of the Society for starting the degree college and forwarded the same to the State Government. However, by the impugned order dated 20/8/2020, the State Government refused to grant permission to start the degree college on two counts namely there were no documents with regard to the construction undertaken that were prepared by the local authorities and that there were no documents to indicate that the NAAC Accreditation Process was under progress. Hence this Writ Petition.

4. The learned Counsel for the petitioner submitted that in view of the positive recommendation by the University, it would not be permissible for the State Government to have refused to grant necessary permission to start the degree college by seeking to raise discrepancies in the proposal. If at all the State Government desired any documents other than those which were submitted with the proposal, it ought to have granted an opportunity to the Society to clear the deficiencies. Placing reliance on the decision in *Rahbar Education and Welfare Association Vs. S.N.D.T. Women's University and another* [Writ Petition No. 3264/2019 decided on 28/1/2020] it was submitted that since the denial of the permission by the State Government was in breach of the principles of natural justice, the impugned order was liable to be set aside. He further submitted that if an opportunity is granted, the requisite documents sought by the State Government can be supplied for necessary compliance.

5. The learned Additional Government Pleader for respondent No.1 supported the impugned order. According to him, since there was no compliance with the requirements of item Nos. 7 and 18 of the norms as prescribed, the permission came to be refused. It was for the petitioner to have supplied those documents for due consideration along with the proposal. In addition, a reference was made to the reply filed on behalf of

respondent No.1 to submit that the validity of the letter of intent was only till 31/1/2020 and therefore no further steps could now be taken. He therefore submitted that the Writ Petition was liable to be dismissed.

The learned Counsel for respondent No.2 – University submitted that in terms of the report of the Expert Committee, recommendation had been made to the State Government on 3/7/2020 to enable the Society to start the degree college.

6. We have heard the learned Counsel for the parties and we have perused the documents on record. It is undisputed that the requisite procedure as contemplated by Section 109(3) of the Act of 2016 was completed by the petitioner and hence on 3/7/2020, the University recommended the case of the Society for starting the degree college. The impugned order indicates that the documents with regard to the construction undertaken and permission of the local authorities as well as the documents to indicate the NAAC procedure being complied with had not been supplied. We find that in the light of the positive recommendation by the University, the State Government ought to have first given some notice to the petitioner calling upon it to supply the requisite documents so as to consider its proposal. If such notice would have been given, the Society would have had an opportunity to supply

those documents and comply with the said deficiencies as pointed out by the State Government. In the absence of any such opportunity, there was no occasion for the Society to submit such documents. We find that in *Rahbar Education and Welfare Association (supra)*, this Court has observed that while considering the proposal under Section 109(3) of the Act of 2016, if the State Government desires any further compliance from the Society, the same should be brought to its notice and an opportunity should be given to supply the said documents. The observations in the said decision support the stand of the Society. In that view of the matter, we find that an opportunity to clear the deficiencies ought to have been given before finally considering the petitioner's proposal.

7. Insofar as the aspect of lapsing of the letter of intent is concerned, that ground is not stated in the impugned order. Same has been stated only in the affidavit-in-reply. We do not find it necessary to go into that question since the validity of the impugned order will have to be tested on the basis of reasons contained therein. In any event, the learned Counsel for the petitioner seeks to rely upon the provisions of Section 109(3)(e) and (f) of the Act of 2016 to substantiate his stand that the letter of intent has not lapsed.

8. In view of the aforesaid discussion, we are of the view that an

opportunity to the petitioner deserves to be granted to clear the deficiencies mentioned in the impugned order. Accordingly, the following order is passed :

i. The order dated 20/8/2020 is quashed and set aside. In terms of the deficiencies pointed out in the said order, the petitioner is at liberty to supply those documents to the State Government within a period of four weeks from today. The State Government shall thereafter within a period of eight weeks re-consider the proposal in accordance with law and after giving due opportunity to the petitioner and take necessary decision on the request for permission to start the degree college. It is noted that the perspective plan was for a period of five years i.e. from 2019-20 to 2023-24. The decision taken by respondent No.1 shall be communicated to the petitioner.

ii. Rule is made absolute in the aforesaid terms. No costs.

(URMILA JOSHI - PHALKE, J.)

(A.S. CHANDURKAR, J.)

SUMIT