

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO. 1896/2021

Taj Multipurpose Development Organization
Through its Secretary Mr. Ayub Ahmed Qureshi
Aged about 35 years, Occ. Service,
Having office at 786, Shreeram Nagar,
Tumsar, Taq. Tumsar,
Distt. Bhandara-441912.
aaqmba@gmail.com

..... PETITIONER

// VERSUS //

1. State of Maharashtra,
Through its Secretary,
Department of Higher & Technical Education,
Mantralaya, Mumbai.
2. Rashtrasant Tukadoji Maharaj Nagpur University
Through its Registrar,
Nagpur University Campus,
Ravindranath Tagor Marg, Nagpur.
E-mail: infoarcollege@ymail.com
3. Bahujan Hitaya Bahu-Uddesiya Shikshan Shanstha
Through its President / Secretary
Smt. Panchashila Arts, Science & Commerce
Woman's College, Hardoli, Post Mohgaon,
Tah. Tumsar, Distt. Bhandra 441909.
Email – devlijn2801@gmail.com

.... RESPONDENT(S)

Shri A. Sambare, Advocate with Shri G.M. Shitut, Advocate for the petitioner

Shri Amit Madiwale, AGP for respondent no. 1/State

Shri D.R. Bhoyar, Advocate for respondent no. 2

None for respondent no. 3

CORAM : A.S. CHANDURKAR AND G.A. SANAP, J.J.

DATED : 22/02/2022

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

Rule. Rule made returnable forthwith. Heard the learned counsel for the parties.

2. The challenge raised in this writ petition is to the grant of Letter of Intent to the respondent no. 3 pursuant to Government Resolution dated 15.04.2021 at serial no. 107. By that Letter of Intent, the respondent no. 3 has been granted permission to start the Women's College for courses in B.A., B.Com. and B.Sc. in the academic year 2021-2022.

3. The petitioner is a Society registered under the Societies Registration Act, 1860. It intended to start a Women's College at Tumsar, District Bhandara. The State Government by its Resolution dated 15.09.2017 has framed a policy and has also laid down guidelines for issuing Letter of Intent to new colleges that are found to be eligible for running the same in the State of Maharashtra. The respondent no. 2 – University has prepared a perspective plan for the academic sessions 2019-2020 to 2023-2024. According to the petitioner, it had made an online application seeking permission to open a Women's College at Tumsar. The Expert Committee visited the proposed site on 17.02.2021 and recommended the case of the petitioner. Thereafter, the University had also scrutinized the proposal and on 03.03.2021 found compliance

of all the necessary norms by the petitioner. Accordingly the name of the petitioner – Institution was duly recommended by the University to the State Government. On 15.04.2021, the State Government issued a Government Resolution and published a list of colleges found eligible for issuance of Letter of Intent on permanent no grant basis. Three applicants were considered for issuance of Letter of Intent for running a Women's College at Tumsar. However, the Letter of Intent was issued in favour of the respondent no. 3 – college. Being aggrieved, the petitioner has challenged the aforesaid grant of Letter of Intent to the respondent no. 3.

4. Shri A. Sambare, learned Counsel for the petitioner submitted that three applications were received seeking permissions to start Women's Colleges at Tumsar. All the three applicants were found eligible as they had fulfilled the norms prescribed as per the Government Resolution dated 15.09.2017. However, without assigning any reason, the Letter of Intent was issued in favour of the respondent no. 3. This aspect was disclosed for the first time when the State Government on 12.07.2021 issued a communication to the University indicating the issuance of letter to the successful colleges and the fact of rejection of proposals to others. Placing reliance on the decision in Writ Petition No. 1788 of 2020 (*Akemi Education Society Vs. The State of Maharashtra*

and others) decided on 03.11.2020, it was submitted that after considering the provisions of Section 109(3)(d) of the Maharashtra Public Universities Act, 2016 (for short the “Act of 2016”) this Court had held that in absence of any reason for issuing a Letter of Intent in favour of one applicant in preference to the other was not sustainable. It was thus submitted that the impugned Government Resolution dated 15.04.2021 was liable to be set aside.

5. Shri Amit Madiwale, learned Assistant Government Pleader for the respondent no 1 - State supported the impugned order. He relied upon the affidavit filed on behalf of the respondent no. 1 and submitted that though all three applicants were found eligible to fulfill the criteria prescribed as per the Government Resolution dated 15.09.2017, the claim of the respondent no. 3 was found suitable and hence Letter of Intent was issued to it. He further submitted that since the perspective plan was updated every year by the University, it would not be possible to grant such permission to the petitioner for the Academic Year 2021-2022 as that process had come to an end.

Shri D.R. Bhoyar, learned Counsel for the respondent no. 2 - University submitted that though the application made by the petitioner was recommended by the University, a final decision in that regard was to be taken by the State Government. In the perspective plan there was

provision of only one Women's College at Tumsar and therefore it would not be permissible to grant a Letter of Intent in favour of the petitioner as prayed for.

Despite service, the respondent no. 3 has failed to appear and contest the writ petition. On 17.02.2022 the following order was passed :-

“As per the office noting dated 15.09.2021, respondent no. 3 is shown to be served by email. Service on respondent no. 3 be certified.

There is no appearance on behalf of respondent no. 3.

The learned Counsel for the petitioner by placing reliance upon the decision in Writ Petition No. 1788/2020 (Akemi Education Society Vs. The State of Maharashtra and others) decided on 03.11.2020 submits that while rejecting the proposal of the petitioner for issuance of letter of intent for starting Junior College no reason has been mentioned as to why the proposal of respondent no. 3 has been accepted in preference to the proposal of the petitioner.

With a view to grant one opportunity to the respondent no. 3, put up on 22.02.2022.”

Today also there is no appearance on behalf of the respondent no. 3.

6. We have heard the learned Counsel for the parties at length and we have also perused the material on record. It is an admitted

position that three applications were received for starting Women's College at Tumsar. All three applicants were found eligible for issuance of Letter of Intent. This fact is clear from the communication dated 12.07.2021 issued by the State Government. In other words, there being three eligible applicants, there was a discretion with the State Government to select one amongst them. The question to be considered is the basis for finding one such applicant eligible for issuance of Letter of Intent from amongst the three. This very situation has been considered by the Division Bench of this Court in *Akemi Education Society (Supra)*. In paragraph no. 22 thereof, it has been observed as under:-

22. On going through the provisions of section 109(3)(d), it is seen that the State Government has to consider all relevant factors, suitability of management seeking Letter of Intent, State level priority with regard to the location of the Institution of higher learning. Though it is stated in section 109(3)(d) that absolute discretion vests in the State Government while taking the decision, still the Government is required to take into account the factors as stated in section 109(3)(d) itself. In the present case, it appears that respondent No.3 on scrutiny found that the proposals of the petitioner and respondent No.4 complied with all the conditions. It also appears that respondent No.3 has recommended the proposals of the petitioner and respondent No.4 to respondent Nos.1 and 2 for issuance of Letter of Intent to one of them. On perusal of the impugned orders dated 31st January 2020 and 4th July 2020 we find that there is no whisper as to why the discretion was exercised in favour of respondent No.4. In the decision

dated 4th July 2020, it is simply mentioned that the last date of issuance of Letter of Intent was 31st January 2020, therefore, the representation of the petitioner was rejected. Respondent Nos.1 and 2 have not given any reasons for rejecting the representation of petitioner and it was expected from respondent Nos.1 and 2 to mention what factors prompted it to issue Letter of Intent in favour of respondent No.4. The impugned decisions suffer from the vice of arbitrariness and cannot be sustained.”

We find that the facts of the aforesaid case are similar to the facts of the case in hand. Despite finding three applicants eligible for issuance of Letter of Intent as they all had fulfilled the requisite conditions, it was necessary for the respondent no. 1 to have indicated the reason for preferring the case of the respondent no. 3 for issuance of Letter of Intent to the case of the petitioner. This has not been done. The factors that are required to be taken into account as contemplated by Section 109(3)(d) of the Act of 2016 do not appear to have been taken into account. On this count, we find that the award of Letter of Intent to the respondent no. 3 without assigning any reason is contrary to the decision of this Court referred to hereinabove.

7. The Assistant Government Pleader had rightly submitted that the academic session in question was 2021-2022 and the same will shortly come to an end. It would thus not be permissible at this point of time to direct issuance of a fresh Letter of Intent for the said academic

year. There is no dispute that academic year 2021-2022 would end in a short period. The interests of justice would be served by permitting the petitioner to apply for issuance of a fresh Letter of Intent for the coming academic year as permissible under the Act of 2016. This is for the reason that the perspective plan for the academic year 2022-2023 is yet to be finalized by the State Government. At the same time the respondent no. 3 would have to be permitted to conduct its college for the present academic year 2021-2022 as it is likely that students would have been admitted by it.

8. For the aforesaid reasons, we are of the view that the following order would serve the ends of justice:-

- i. The decision of the State Government as indicated in the Government Resolution dated 15.04.2021 at serial no. 107 directing issuance of Letter of Intent to the respondent no. 3 is set aside for failure to consider the factors stated in Section 109(3)(d) of the Act of 2016. The said Letter of Intent however shall operate only for the academic year 2021-2022 and would cease to operate thereafter.
- ii. It would be open for the petitioner, the respondent no. 3 and all other interested applicants to apply afresh for issuance of Letter of Intent for starting Women's College at

Tumsar based on the perspective plan as accepted by the State Government for the subsequent academic year. The State Government shall consider the applications as received in accordance with law.

9. Rule is made absolute in the aforesaid terms with no order as to costs.

JUDGE

JUDGE

SANDIP
MAHADEV
GATE

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by SANDIP
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