



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

WRIT PETITION NO. 2240 OF 2023

1. Shri Dada Patil Rajale Shikshan
Sanstha, Adinathnagar, Tq. Pathardi,
Dist. Ahmednagar,
Through its Secretary,
Ravindra S/o Jagannath Mahajan,
Aged : 52 Years, Occu. : Agril.,
R/o Adinathnagar, Tq. Pathardi,
Dist. Ahmednagar.
 2. Shri Dada Patil Rajale Shikshan
Sanstha, Adinathnagar, Tq. Pathardi,
Dist. Ahmednagar,
Through its Trustee,
Shrikant Eknath Misal,
Aged : 46 Years, Occu. : Agril.,
R/o Susare, Tq. Pathardi,
Dist. Ahmednagar.
 3. Dada Patil Rajale Arts & Science College,
Adinathnagar, Tq. Pathardi,
Dist. Ahmednagar.
Through its Principal,
Rajdhar S/o Jaywantrao Temkar,
Aged : 56 Years, Occu. : Service,
R/o Adinathnagar, Tq. Pathardi,
Dist. Ahmednagar.
- .. Petitioners

Versus

1. The State of Maharashtra,
Through the Secretary to the
Government of Maharashtra in
Higher & Technical Education
Department, Mantralaya,
Fort, Mumbai – 32.

2. The Director of Higher & Technical Education,
Maharashtra State, Pune.
 3. Savitribai Phule Pune University,
Ganeshkhind, Pune,
Through its Registrar.
 4. Hutatma Babu Genu Samajwadi
Vidhyapith Mumbai Branch Tisgaon
Through its Secretary,
Kushal S/o Pramod Bhapase,
Age : 30 Years, Occu. : Agril.,
R/o Tisgaon, Tq. Pathardi,
Dist. Ahmednagar.
- .. Respondents

Shri Rajendra K. Temkar, Advocate for the Petitioners.
 Shri S. P. Joshi, A.G.P. for the Respondent Nos. 1 and 2.
 Shri V. P. Golewar, Advocate h/f Shri A. R. Joshi, Advocate for the
 Respondent No. 3.
 Shri S. S. Thombre, Advocate for the Respondent No. 4.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.**

Closed for Judgment on : 22.08.2024
Judgment pronounced on : 30.08.2024

JUDGMENT (Per Shailesh P. Brahme, J.) :-

. Rule. Rule is made returnable forthwith. Heard the
litigating sides finally with their consent.

2. Petitioners are challenging publication of proclamation
dated 10.01.2023 issued by the respondent No. 3/University
inviting proposals for opening of new colleges at added location
Devrai-Nimbodi Phata, Tq. Pathardi, Dist. Ahmednagar for the

academic year 2023-2024. They are further seeking directions to prepare perspective plan in accordance with provisions of the Maharashtra Public Universities Act, 2016 (hereinafter referred as to the 'Act' for the sake of brevity and convenience) and the recommendations of the Dr. Narendra Jadhav committee.

3. The petitioner No. 1 is an educational institution, which runs the petitioner No. 3 college at Pathardi. It was their apprehension that if the permission is granted to open new college at Devrai-Nimbodi Phata, Tq. Pathardi, Dist. Ahmednagar, which is just 07 KM from their college, that would lead to unhealthy competition and would violate recommendations of Dr. Narendra Jadhav Committee, which was appointed vide Government Resolution dated 20.07.2015 and which has laid down guidelines.

4. The perspective plan of the respondent No. 3/University for years 2019-2020 to 2023-2024 did not provide the location of Devrai-Nimbodi Phata, Tq. Pathardi, Dist. Ahmednagar. It was incorporated in the annual plan of 2023-2024 stated to be with the approval of the commission U/Sec. 76 of the Act, accorded in the meeting dated 11th November 2022. The respondent No. 1 intimated the universities in the State of Maharashtra to invite the proposals for opening new colleges at the added locations. Accordingly, proclamation was issued by the respondent No. 3/University on 10.03.2023 inviting applications for various locations including Devrai-Nimbodi Phata, Tq. Pathardi, Dist. Ahmednagar. This is the cause for the petitioners to approach

this Court.

5. The learned counsel for the petitioner Mr. Temkar submits that the location in question for which the proposals are invited was not part of the perspective plan of five years prepared U/Sec. 107 of the Act. The annual plan of 2023-24 incorporating the location in question is not in consonance with the perspective plan and it is illegal. Reliance is placed on the **judgment dated 12.07.2024** rendered by this Court in the matter of **Trimurti Pawan Pratishthan Vs. The State of Maharashtra and others in Writ Petition No. 4282 of 2023**. He would further submit that the guideline of Dr. Narendra Jadhav committee stipulating distance of minimum 20 KMs between two colleges has been flouted. He would further submit that annual plan of 2023-2024 is against the Government Resolution dated 15.09.2017. It is further submitted that in furtherance of the impugned proclamation, the respondent No. 1 issued letter of intent (hereinafter referred as to the 'LOI' for the sake of brevity and convenience) to the respondent No. 4, which is also, consequentially, illegal.

6. To repel the contentions and the prayers of the petitioners, the respondents have filed distinct affidavits in reply. The learned counsel appearing for them advanced submissions in accordance with their pleadings in the replies and the documents annexed thereto.

7. Learned Assistant Government Pleader appearing for the

respondent Nos. 1 and 2 adverted our attention to paragraph No. 8 of the affidavit in reply and submitted that the recommendations of Dr. Jadhav committee did not culminate into statutory norms or the Government policy dated 15.09.2017. They are merely recommendatory in nature. It is further contended that new locations were approved in the meeting dated 11.11.2022 and accordingly place Devrai-Nimbodi Phata, Tq. Pathardi, Dist. Ahmednagar has been incorporated in annual plan of 2023-2024. It is in consonance with the Act. The respondent No. 1 has issued LOI to the respondent No. 4 on merits.

8. Learned counsel Mr. Golewar, appearing for the respondent No. 3/university would adopt the submissions of the learned A. G. P. Additionally, it is submitted that relevant factors were taken into consideration for preparation of the perspective plan for the years 2019-2020 to 2023-2024. Annual plan of 2023-2024 was in accordance with perspective plan and it was duly approved. Both the plans were prepared by following statutory procedure. The respondent No. 4 is selected in accordance with law.

9. Learned counsel Mr. S. S. Thombre, representing the respondent No. 4 vehemently made following submissions :

(i) The petitioners have no *locus standi* to object to the new location advertised by the impugned proclamation. It is the sole prerogative of the respondent No. 1 as per Article 41 of the Constitution of India to select the location.

- (ii) The petitioner No. 3/College was found to be incapable to cater to the needs of education and to overcome the monopoly of the petitioners, the decision was taken to add impugned location for the year 2023-2024.
- (iii) The recommendation or guidelines of Dr. Narendra Jadhav Committee have no statutory force and would not override the discretion of the respondent Nos. 1 to 3.
- (iv) The location in question was approved by the Commission U/Sec. 76 of the Act, which was not challenged and thereafter impugned proclamation was issued. It was lawful for the respondent Nos. 1 to 3 to add location as per Section 77(1) of the Act.
- (v) The annual plan of 2023-2024 is in consonance with the perspective plan and it was prepared after following due procedure of law.
- (vi) The respondent No. 1 rightly issued LOI vide Government Resolution dated 01.04.2023 to the respondent No. 4 considering the infrastructure and the parameters laid down in the G. R. dated 15.09.2017.
- (vii) In the matters of LOI, there is limited scope for judicial review.

10. He would rely on the **judgment dated 21.02.2024** of this

Court (Principal Seat) in the matter of **Jagruti Foundation Vs. The State of Maharashtra and others in Writ Petition No. 6256 of 2022.**

11. Before we advert to the controversy involved in the matter, it is necessary to disclose subsequent events. We granted interim relief on 27.02.2023 directing that LOI granted pursuant to the impugned public proclamation would be subject to the outcome of the petition. By G. R. dated 01.04.2023, the respondent No. 1 granted LOI to the respondent No. 4. The final approval is also issued to the respondent No. 4.

12. The petitioner No. 3/college is at Pathardi, which is 07 to 08 KM away from Devrai-Nimbodi Phata, Tq. Pathardi, Dist. Ahmednagar, which is the location for which applications were invited to open a new college. The petitioner No. 3 college is aided college. The apprehension of the petitioners cannot be said to be misplaced. There is possibility of unhealthy competition. If the petitioners are approaching this Court on the legal submissions that the annual plan is not in accordance with perspective plan, then petition cannot be thwarted on the preliminary objection of *locus standi*.

13. There is no doubt that it is the responsibility of the State under Article 41 of the Constitution of India to cater to the needs of education. However, the obligation of the State for opening new colleges is regulated by statutory procedure prescribed under the Act and the Government Resolution dated 15.09.2017.

The power vested with the respondent No. 1 to allot colleges is not unbridled one. We, therefore, over-rule the preliminary objection of the respondents regarding *locus standi*.

14. There is no material placed on record by the respondent No. 4 to substantiate the stand that there was monopoly of the petitioners and the college run by them was found to be incapable to cater to the needs. It is not the case of respondent Nos. 1 to 3 that because of the lapses on the part of the petitioners, the recourse was required to be taken to add the location in question to have another college in the vicinity. We are not impressed by the submissions of the learned counsel for the respondent No. 4 that in view of Clause No. 2.3 of the G. R. dated 15.09.2017, the petitioners are prohibited from objecting to opening of a new college at the location in question. We propose to examine the matter on merits.

15. The respondent No. 1 issued Government Resolution dated 20.07.2015 for appointing a Committee under the Chairmanship of Dr. Narendra Jadhav. A report was submitted vide communication dated 26.09.2015 laying down the guidelines. We are concerned with the guidelines regarding the distance between any two colleges. For rural area it is stipulated to be 20 KM. The rival submissions have been made by the parties regarding the nature of the guidelines. We do not propose to enter into the controversy, as to whether the guidelines are mandatory or directory. We are of the considered view that in the present matter, it is not necessary to address the issue.

16. At the outset, we would like to refer to our pronouncement in the matter of **Trimurti Pawan Pratishthan Vs. The State of Maharashtra and others** (supra). A similar controversy fell for our consideration as to whether new location can be incorporated in the annual plan which is not provided for in the perspective plan. In that context, we have observed as follows :

25. Having borne in mind, the sanctity and importance of the perspective plan it is imperative that any annual plan which is published every year is strictly in accordance with and should be compatible with the perspective plan. Looked at from this angle, as is pointed out by Mr. Nagargoje the perspective plan that was published by the respondent No.3 - University, by Government Resolution dated 15.09.2017 which was for a period of five years, did not indicate any plan for starting a new law college in entire Newasa Taluka. We, therefore, have no manner of doubt that the annual plan pursuant to which both these institutes had applied in response to the notification issued by the respondent No.3 – University, is clearly in violation of the perspective plan and for this reason alone the entire process of issuing notification dated 10.01.2023 inviting application for the location ‘Kharde Newasa Phata’, which is not at all traceable to the perspective plan, becomes illegal.

26. We cannot approve of rather would deprecate the practise of the respondent No.3- University in not being consistent in upholding the sanctity of a perspective plan and rather indulging in illegalities by coming out with an annual plan inconsistent with the perspective plan to the extent of the location in dispute and starting of a new law college which is not traceable to the perspective plan. In our considered view,

this in itself is sufficient to quash the permission granted to respondent No.4 - Institute under the impugned GR. Obviously, this will obviate any consideration of any other objection being raised in both these petitions questioning sustainability and legality of the permission granted to respondent No.4. However, by way of precaution, we would examine even that aspect.

17. Pertinently, newly added location of Kharde Newasa Phata vide self same proclamation dated 10.01.2023 was held to be outside the purview of the perspective plan and we proceeded to quash the LOI issued to the respondent No. 4 in that matter. Again we are faced with an identical controversy, but it is in respect of Devrai-Nimbodi Phata, Tq. Pathardi. The perspective plan for years 2019-2020 to 2023-2024 did not have location Devrai-Nimbodi Phata, Tq. Pathardi. The respondent No. 3/university has placed on record communication dated 23 July 2022 stating that annual plan was prepared for 2023-2024, which was forwarded for approval. The annexure to the letter did not indicate location in question. This location seems to have been approved in a meeting dated 11.12.2022. Thereafter, the respondent No. 1 instructed the universities on 07.01.2023 to invite the proposals by issuing proclamation. The impugned proclamation is the fall out of the approval given by the commission and instruction dated 07.01.2023.

18. The locations provided by the perspective plan remain locked for five years. There is no provision in the Act to change the location in defiance with the perspective plan. We do not see any such power either U/Sec. 77(1)(a) or (b) or U/Sec. 109 of the

Act. On the contrary, following provisions are relevant :

**THE MAHARASHTRA PUBLIC
UNIVERSITIES ACT, 2016**

1.
2.

37. (1) The Board of Deans shall have the following powers and duties, namely:—

- (a)
- (b)

- (i) to prepare the annual plan for the location of colleges and institutions of higher learning, in consonance with the perspective plan;

109. (1)

- (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.

19. On the same line following provision is incorporated in the Government Resolution dated 15.09.2017.

२.१ महाराष्ट्र सार्वजनिक विद्यापीठ अधिनियम २०१६ मधील कलम १०९(२) नुसार, कलम १०७ अन्वये तयार केलेल्या सम्यक योजनेशी सुसंगत नसेल, असे उच्च शिक्षणाचे नवीन महाविद्यालय सुरु करण्यासाठीचा कोणताही अर्ज विद्यापीठाकडून विचारात घेतला जाणार नाही.

20. In view of above statutory provision, it is not permissible for the commission U/Sec. 77 of the Act to incorporate any new

location in the annual plan. Though in the present matter a meeting was convened on 11.11.2022 approving new locations in the annual plan, such exercise was without any sanctity of law. Consequently, communication dated 07.01.2023 and proclamation dated 10.01.2023 incorporating Devrai-Nimbodi Phata, Tq. Pathardi, are also bad in law. The submissions of the learned counsel Mr. S. S. Thombre that the power exists with the commission to add location cannot be countenanced. We are of the considered view that in the present matter annual plan of 2022-2023 to the extent of location in question is not in consonance with the perspective plan. The case in hand is squarely covered by the ratio. The proclamation in question is *exfacie* illegal.

21. Learned counsel for the respondent No. 4 refers to the judgment in the matter of **Jagruti Foundation Vs. The State of Maharashtra and others** (supra). In that matter the petitioner was refused LOI and the respondent Nos. 6 to 8 were granted the same. In that context the scope of the judicial review was considered. Our attention is invited to para Nos. 27 to 33 and 57 of the judgment. In that matter the issue was in respect of discretion of the State Government U/Sec. 109(4)(d) and scope of judicial review under Article 226 of the Constitution of India. The controversy which we have dealt with in the present matter was not germane in that matter. Therefore, we prefer to follow our view taken in the matter of **Trimurti Pawan Pratishtan Vs. The State of Maharashtra and others** (supra). However, we are in agreement with the scope of judicial review of High

Court laid down in para No. 29 of the judgment in the matter of **Jagruti Foundation Vs. The State of Maharashtra and others** (supra). We are aware of the fact that, we are not sitting in appeal. We have examined the decision making process. We have recorded our findings on undisputed facts. It is a matter of usurpation of power which cannot be over-looked in exercise of the writ jurisdiction.

22. For the reasons stated above, we find that petition succeeds and we pass following order.

O R D E R

- A. The writ petition is allowed.
- B. The public proclamation dated 10.01.2023 issued by the respondent No. 3/University to the extent of location Devrai-Nimbodi Phata, Tq. Pathardi, Dist. Ahmednagar is quashed and set aside and consequential LOI issued to the respondent No. 4 vide Government Resolution dated 01.04.2023 is also quashed and set aside.
- C. Rule is made absolute in above terms. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.] [MANGESH S. PATIL, J.]