



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

WRIT PETITION NO. 2650 OF 2019

Shejal Bahuuddeshiya Shikshan
Sanstha, Samarth Nagar, Jalna,
Tq. & Dist. Jalna,
Through its President,
Dr. Shankar Bhagwan Ambhore,
R/o Pethe Nagar, Plot No. 120,
Bhausingpura, Aurangabad,
Tq. & Dist. Aurangabad.

.. Petitioner

Versus

1. The State of Maharashtra,
Through Secretary,
Higher and Technical Education
Department, Maharashtra State,
Mantralaya, Mumbai – 400 032.

2. Vice Chancellor,
Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad,
Tq. & Dist. Aurangabad.

.. Respondents

Shri V. D. Salunke, Advocate for the Petitioner.
Shri P. S. Patil, Addl.G.P. for the Respondent No. 1.
Shri R. O. Awasarmol, Advocate for the Respondent No. 2.

**CORAM : S. G. MEHARE AND
SHAILESH P. BRAHME, JJ.**

**CLOSED FOR JUDGMENT ON : 25.11.2024
JUDGMENT PRONOUNCED ON : 02.12.2024**

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

. Rule. Rule is made returnable forthwith. With the consent

of parties heard both sides finally at the admission stage.

2. Petitioner is a minority educational institution aspiring to open a new college, has approached this Court seeking direction for grant of permission to open a new college at village Babargaon, Tq. Gangapur, Dist. Aurangabad from the academic year 2019-2020 and seeking quashment of action refusing to grant permission to open the college.

3. The petition is filed on 12.02.2019. By order dated 06.03.2019 notices were issued for final disposal, returnable on 03.04.2019. The respondent No. 2 – university did not file reply despite opportunities were given to it. The respondent No. 1 also sought many adjournments for filing reply. Ultimately, on 09.02.2021 reply was filed. At the outset, it is necessary to disclose that we are considering the prayer of the petitioner to open a new college which was made for academic year 2019-2020, when academic year 2024-2025 is in progress.

4. It is the case of the petitioner that it is a minority institution. In annual plan of 2019-2020 the location of Babargaon, Tq. Gangapur, Dist. Aurangabad was incorporated for allotting the proposed new college as per the approval of Management Council dated 07.08.2018. The respondent No. 1 issued Government Resolution dated 15.09.2017 calling upon the proposals for opening the new colleges. Petitioner submitted proposal on 29.09.2018 along with necessary documents by paying requisite fees. It was scrutinized by the respondent No. 2

– university. The deficiencies were reported, which were cured by the petitioner. Ultimately vide letter dated 29.11.2018, the respondent No. 2 – university recommended the proposal of the petitioner for issuing Letter of Intent (hereinafter referred as to the “L.O.I.”).

5. Despite positive recommendation from the university, the petitioner was not issued with L.O.I. The respondent No. 1 issued Government Resolution dated 31.01.2019 granting L.O.I. to various institutions. The petitioner was not included in it. The petitioner was not informed the reasons for rejection of the proposal by either of the respondents. Hence petitioner is before us.

6. Learned counsel Mr. V. D. Salunke, appearing for the petitioner submits that despite positive recommendation, the respondent No. 1 did not issue L.O.I. The petitioner was the only claimant for the location in question and proposal was complete in all respects. Hence denial of L.O.I. by the respondent No. 1 is arbitrary and discriminatory. It is submitted that impugned action is against the Government Resolution dated 15.09.2017 especially Clause Nos. 3.11 to 3.14. The petitioner had removed all the deficiencies and thereafter respondent No. 2 – university had recommended the proposal. Hence, there was no reason for the respondent No. 1 to deny L. O. I.

7. Learned counsel further submits that the petitioner is entitled to get L.O.I. before 15.06.2019. In the absence of any

fault on the part of the petitioner, impugned action is perverse and arbitrary. It is vehemently submitted that the proposal of the petitioner for 2019-2020 is not enervated by efflux of time and still L.O.I. can be granted in the present academic year. Learned counsel would submit that petitioner paid huge fees. The respondents intentionally delayed filing of affidavit in reply for three years and came up with after thought theory of rejection of the proposal citing grounds first time in the reply, which amounts to fraud.

8. Learned counsel submits that the plea of the respondent No. 1 that the proposal was rejected and communicated to the university vide letter dated 07.02.2019, is after thought. He relies on the judgment of the Supreme Court in the matter of Mohindersing Gill and another Vs. The Chief Election Commissioner, New Delhi and others reported in *1978 (1) SCC 405*.

9. Per contra, learned Additional Government Pleader repels the submissions of the petitioner by relying on affidavit in reply. It is stated in para No. 6 of the reply that the proposal was found to be deficient for four reasons. The respondent No. 1 duly communicated the reasons for rejection of proposal vide letter dated 07.02.2019 to the respondent No. 2 and instructed to communicate those to the petitioner. Petitioner's proposal for the academic year 2019-2020 cannot be considered now in the academic year 2024-2025. It is further submitted that the respondent No. 1 has discretion to reject the proposal, albeit, being positively recommended by the university.

10. Learned counsel for the respondent No. 2 – university neither supported the petitioner, nor the respondent No. 1.

11. We have considered rival submissions of the parties.

12. The petitioner had submitted proposal on 29.09.2018 in pursuance of the Government Resolution dated 15.09.2017 for the location at Babargaon, Tq. Gangapur, Dist. Aurangabad. After exchange of communication in between petitioner and the respondent No. 2 in respect of deficiencies in the proposal, vide letter dated 29.11.2018 the proposal was positively recommended by the respondent – university to the respondent No. 1. The respondent No. 1 found shortfalls in the proposal and hence L.O.I. was not issued. The respondent No. 1 claims that vide letter dated 07.02.2019 the reasons for rejection were communicated to the respondent No. 2.

13. It is the discretion of the respondent No. 1 as per Section 109(3)(d) of the Maharashtra Public Universities Act, 2016 (hereafter referred as to the “Act of 2016” for the sake of brevity and convenience). If in the opinion of the State Government the management seeking L.O.I. is not fit and proper, then it is empowered to refuse to issue L.O.I. In view of this statutory power, we are unable to accept the submission of the petitioner that once there is a positive recommendation from the university, the respondent No. 1/State has no option, but to issue L.O.I.

14. The proposal of the petitioner was rejected by the respondent No. 1 considering norms laid down by the Government Resolution dated 15.09.2017. In paragraph No. 6 of the reply following reasons are cited :

i) As per norms 13 of schedule B of GR dated 15.09.2017 the relevant paper of registered lease deed were not enclosed. Only Index-II (suchi No. 2) was enclosed. The required area is 1H=20R however, it seems that the area shown on Index NO. 2 is 1H=19R. The documents and area are not as per norms 13.

ii) As per norms 14 of the schedule B of the said GR map of proposed college has to be annexed. The map is annexed but said map does not show that it is of the name of proposed college.

iii) Norm 15 of schedule B of said GR required details information about the finances, source of finance, details of teaching staff and non-teaching staff as well as provisions of finance made for the same. In the present matter short information is given however detail information is required.

iv) As per norm 16 of schedule B of the said GR details about the previous experience, in Education field or social field and other details are required. The petitioner institute give short information however detail information is required.

15. By letter dated 07.02.2019, the respondent No. 1 had duly communicated the above reasons to the respondent No. 2 with specific instruction to apprise the reasons to the petitioner immediately. The letter was accompanied by the list of institutions whose proposals were rejected and the petitioner was at Sr. No. 11. The respondent No. 1 cannot be held liable for not communicating the reasons of rejection. Promptly the reasons were communicated to the university.

16. We have already recorded that the respondent No. 1 has discretion either to accept or to reject the recommendation. Though the proposal of the petitioner was solitary for location in question, it would not bind the respondent No. 1 to issue L.O.I. When there were shortfalls, it was not mandatory for the respondent No. 1 to issue L.O.I. prior to 15.06.2019. No benefit can be given to the petitioner by implication of clause 3.14 of the G. R. dated 15.09.2017. After issuance of G.R. dated 31.01.2019 when petitioner learnt that it was not issued with L.O.I., no attempt was made by approaching the respondent – university to know the reasons. As per Clause No. 3.11 of the G.R., the respondent No. 2 should have intimated the reasons of rejection to the petitioner. The respondent No.2 has not given any explanation. It did not file affidavit in reply.

17. It is vehemently contended by the learned counsel for the petitioner that reasons assigned for rejecting its proposal are after thought and patently false. The conduct of the respondent No. 1 is castigated for filing affidavit in reply belatedly. Just because affidavit in reply was filed after about three years would not be a ground to doubt genuineness or validity of the reasons for rejection of the proposal. The reasons were communicated by the respondent No. 1 to the respondent No. 2 – university vide letter dated 07.02.2019.

18. Petitioner has placed reliance on the judgment of the Supreme Court in the matter of Mohindersing Gill and another Vs. The Chief Election Commissioner, New Delhi and others (supra). The rejection

of the proposal is communicated by letter dated 07.02.2019 by the respondent No. 1. Same reasons are incorporated in affidavit in reply dated 09.02.2021 filed by the respondent No. 1. It is not the case that the reasons for rejection are for the first time supplied by affidavit and that too before the High Court. Already those reasons existed and communicated to the respondent – university and those are reiterated by way of affidavit. For this reason the judgment cited above does not assist the petitioner.

19. With his usual vehemence, learned counsel Mr. V. D. Salunke tried to persuade us that the proposal cannot be enervated by efflux of time. Admittedly, vide G.R. dated 15.09.2017 proposals were invited for issuing L.O.I. for 2019-2020. The G.R. is followed by annual plan of 2019-2020. The management council approved the location on 07.08.2018. Annual plan was fallout of perspective plan of five years from 2014 to 2019. When we are considering the petition in the academic year 2024-2025, neither the relevant perspective plan, nor the annual plan are in force.

20. As per Section 107 of the Act of 2016 comprehensive perspective plan could be for five years. There is every possibility of commencement of next perspective plan. Similar is the case with the annual plan. One does not know that the location in question for which the petitioner aspired to open a college subsisted in the present perspective plan as well as annual plan applicable for 2024-2025. Therefore, the petitioner's claim cannot be considered for the present academic year.

21. The claim of any educational institution to open a college at a particular location cannot be accepted randomly. There is statutory framework provided by Sections 107 and 109 of the Act of 2016. For opening of the new colleges comprehensive plan would be prepared as per Section 107 of the Act. For preparing the perspective plan various factors are taken into consideration prescribed by Sub Section 1 to 6 of Sec. 107 of the Act. It is technical as well as expertise exercise. The Board of Deans U/Sec. 37(1)(b)(i) of the Act of 2016 prepares the perspective plan. Then it is recommended by the Management Council to the Academic Council U/Sec. 31(7). Thereafter Academic Council approves it U/Sec. 37(1)(q). The perspective plan prepared by the university is placed before the Commission U//Sec. 37(1)(o) for approval. After such approval it becomes enforceable.

22. Thereafter the annual plan is prepared in consonance with perspective plan as per Sub Section 5 of Section 107 of the Act of 2016. A particular location which was selected in an erstwhile perspective plan or annual plan may not subsist in a successive plan. It is to be demonstrated that the same location subsisted in successive plan, which is not the plea of the petitioner in the present case. This procedure has been dealt with by the coordinate bench vide **judgment dated 26 August 2024** in the matter of **Nisargdeep Shikshan Prasarak Mandal, Aurangabad Vs. The State of Maharashtra and others in Writ Petition No. 2093 of 2024.**

23. It is relevant to notice that the L.O.I. granted to the institution is valid upto 31st January of the next following year as per Sec. 109(3)(e) of the Act of 2016 and final approval is granted upto 15th June of the year in which such a new college is proposed to be started. Considering the timeline stipulated in the statute, in the present matter L.O.I. was valid upto 31.01.2020, if it was to be granted. There is a statutory provision enabling the Court to award L.O.I. within the timeline provided above. Therefore, the submission of the learned counsel for the petitioner that L.O.I. can be granted has no merit.

24. It reveals from the record that the respondent No. 2 has disclosed the reasons for rejection of petitioner's proposal in February 2019 itself. If the petitioner was not further communicated the reasons, it would be the respondent No. 2 who is responsible. The respondent No. 2 has not chosen to file affidavit in reply and is a silent spectator. The petitioner at the most can sue the respondent No. 2 for its inaction, if permissible in law. But no relief can be claimed against the respondent No. 1.

25. For the reasons stated above, present petition sans merit. It is dismissed. Rule is discharged. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

[S. G. MEHARE, J.]