



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

WRIT PETITION NO. 3150 OF 2024

Aastha Education and Welfare Society,
Pundlikwadi, Mahaweer Chowk,
Nanded, Tq. & Dist. Nanded,
Through its President,
Dr. Abhaykumar Nrusinhrao Bhavsar.

... **Petitioner**

VERSUS

1) The State of Maharashtra
Through its Secretary
Higher and Technical Education
Department, Mantralaya, Mumbai.

2) Swami Ramanand Teerth Marathwada
University,
'Dnyanteerth' Parisar, Vishnupuri,
Nanded, Tq. & Dist. Nanded,
Through its Registrar.

3) Gramoday Sevabhavi Sanstha,
Babhulgaon, Tq. Vasmat,
Dist. Hingoli,
Through its President

... **Respondents**

...

Advocate for Petitioner : Mr. K.P. Rodge
Addl.G.P for Respondent no. 1 : Mr. A.R. Kale
Advocate for Respondent No. 2 : Mr. U.S. Malte
Advocate for Respondent No. 3 : Mr. S.S. Tope, i/b Mr. Rushikesh R. Shinde

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

**RESERVED ON : 12.08.2024
PRONOUNCED ON : 25.09.2024**

JUDGMENT : (MANGESH S. PATIL, J.)

Heard. Rule. Rule is made returnable forthwith.

2. The learned Addl.G.P. Mr. Kale waives service for respondent no. 1,

who is the Secretary of the Higher and Technical Education Department of the State of Maharashtra. The learned advocate Mr. Malte waives service for respondent no. 2 a Public University governed by the Maharashtra Public Universities Act, 2016 (the Universities Act) and the learned advocate Mr. Tope i/b Mr. Shinde waives service for respondent no. 3-institute.

3. By way of this petition under Article 226 of the Constitution of India, the petitioner which is a public Trust intending to set up a new law college pursuant to the annual plan published under Section 107 of the Universities Act in tune with the perspective plan prepared there under for the location Vasmat, district Hingoli, is challenging the decision of respondent no. 1, published by way of a government resolution dated 15.02.2024, thereby issuing Letter of Intent (LOI) to respondent no. 3-institute for setting up a new law college and simultaneously refusing to grant the LOI to it from the academic year 2024-2025.

4. During pendency of the petition, by the order dated 12.06.2024, it was directed that the permission granted to respondent no. 3 pursuant to the LOI in question shall be subject to the final outcome of the writ petition.

5. Since, admittedly, during pendency of the petition a final permission has been granted by respondent no. 1 to respondent no. 3-institute, by way of amendment even that is being challenged by the petitioner.

6. The learned advocate Mr. Rodge for the petitioner would take us through the papers and the provisions of the Universities Act and submitted that the proposal of the petitioner was complete in all respects, however, without assigning any reason, its name was not included in the impugned government resolution dated 15.02.2024. As against this, the proposal of respondent no. 3-institute was deficient in many respects. Even the basic requirements were not fulfilled. However, surreptitiously and with a political pressure, respondent no. 3 was allowed to clear the deficiencies which were not removed to the fullest extent and still it was granted LOI and

subsequently a final permission.

7. Mr. Rodge would submit that even the basic requirement of possessing a land either owned or taken on lease was lacking and was allowed to be cured subsequently. The lease deed of respondent no. 3 was not even in existence but still it had submitted the proposal and it was favourably considered for the political reasons. Nothing was divulged to the petitioner and only after an application was submitted under the Right to Information Act that it was revealed. He would advert our attention to the inspection report, carried out on behalf of respondent no. 2 University demonstrating that in spite of want of basic amenities and compliances in the form of documents of ownership or lease, its proposal was forwarded by respondent no. 2-University with a positive recommendation and subsequently was accepted by respondent no. 1. As against this, in spite of there being no deficiency in the petitioner's proposal, by a communication dated 10.06.2024, the University has informed the decision of respondent no. 1 State Government refusing to grant LOI only on the ground that though the proposal was fully compliant with the norms, since the LOI was being issued to some other institute, which was none other than respondent no. 3, by resorting to Section 109(3)(g) of the Universities Act, as a ground for turning down petitioner's proposal. The decision is arbitrary and illegal. Though the State Government has absolute power to grant permission, the power could not have been exercised in such an arbitrary and biased manner.

8. Per contra, the learned Addl.G.P and the learned advocates for respondent nos. 2 and 3 would support the decision. They would strenuously submit that it is a prerogative of the State Government to grant LOI and permission as laid down under Section 109 of the Universities Act. Though the proposal of respondent no. 3 was deficient, the shortcomings were duly notified vide a communication dated 10.10.2023. Three objections were raised in respect of the points at Sr. Nos. 6, 13 and 17, viz.

the financial affairs were not being done through Nationalized or Scheduled Banks, non availability of land and five year road map of the college, respectively. After removal of such shortcomings, the proposal of respondent no. 3 was considered objectively and it was granted LOI and subsequently final permission. Thus, they would submit that no error or illegality has been committed in granting permission to respondent no. 3 and refusing it to the petitioner.

9. Additionally, the learned advocate for respondent no.3 would submit that in order to remove the defects respondent no. 3 had taken on lease the requisite land by a registered lease-deed. Subsequently, an inspection was undertaken and after being satisfied LOI was issued. Subsequently, since the lessors backed off and requested for cancelling the lease as they intended to sell it, a land in the proximity, barely within distance of few metres was purchased and it was subsequently accorded final permission. He would also submit that it is not that respondent no. 3 was not having any land in its possession at all when it had submitted the proposal. But the lease deed was merely notarized one and to remove the defect, a registered lease deed was got executed which formed the basis for issuance of LOI.

10. We have considered the rival submissions and perused the papers. Obviously, this being a petition under Article 226 of the Constitution of India, there are inherent limitations in the powers of this Court in causing interference in the administrative decisions. Though the power vests with the State Government pursuant to the provisions of the Universities Act to grant or refuse permission to start a new college/course, the Court in exercise of this power of judicial review would merely be concerned with the decision making process. It can neither sit in appeal nor can it substitute its decision. Bearing in mind this trite principle, let us examine the matter in hand objectively.

11. Both the sides are on the same page to the extent that the location

point Vasmat was notified by respondent no. 2 University pursuant to the perspective plan and the annual plan issued under Section 107 of the Universities Act, and pursuant thereto, petitioner and respondent no. 3 had submitted their respective proposals. Admittedly, respondent no. 2 University had forwarded both these proposals with a favourable recommendation. There is also no dispute about the fact that there were certain shortcomings in the proposal of respondent no. 3, which were duly notified to it and thereafter, extending an opportunity to it to overcome those and after verification, the LOI was issued to respondent no. 3 but not to the petitioner.

12. Though it is the stand of the petitioner that it was not communicated and the information was not divulged to it and it had to resort to the Right to Information Act, the information which it collected demonstrated that by the communication dated 10.10.2023, three objections were raised and shortcomings were pointed out to respondent no. 3 by respondent no. 2-University in respect of items at Sr. No. 6, 13 and 17 of annexure-B, as mentioned herein above. Though it is a matter of record that a positive recommendation was forwarded by the University, in spite of the lack of even the documents pertaining to the land (Sr. No. 11), which required respondent no. 3 to have submitted documents pertaining to the availability of infrastructural facilities and availability of staff, teaching as well as non teaching, the proposal was so forwarded. It is pointed out by the affidavits in reply filed by respondent no. 3 that due compliance in respect of the items at Sr. Nos. 6, 13 and 17, was made and only on the basis of the certificate as prescribed in annexure-B, signed by two members of the inspecting committee that the proposal of respondent no. 3 was subsequently considered. The first inspection was carried out on 07.10.2023 and the second one on 09.11.2023. Though it appears that the registered lease deed was executed subsequently on 13.10.2023, the stand of respondent no. 3 in the affidavits in reply that it was merely a notarized

lease deed that was filed along with the initial proposal and to cure the shortcoming, subsequently the registered lease deed was got executed, has not been controverted by the petitioner by filing any rejoinder.

13. Besides, even subsequently, since the stand in the affidavits in reply that the lessors of respondent no. 3 proposed to terminate the lease as they wanted to sell the land and that subsequently by a sale-deed dated 14.02.2024, respondent no. 3 purchased 95-Are portion from land Survey No. 40/1/A of Vasmat, district Hingoli, has not been controverted by the petitioner by filing rejoinder.

14. It is thus quite apparent that though there were certain deficiencies in the proposal of respondent no. 3, whereas the proposal of the petitioner was without any such deficiencies, respondent no. 1 has taken decision to issue LOI to respondent no. 3 and refused it to the petitioner and subsequently a final permission was granted to respondent no. 3.

15. Obviously, since the petitioner and respondent no. 3 were intending to start a new law college at the same point Vasmat from the annual plan, which in turn was in consonance with the perspective plan of respondent no.2 University, ultimately the decision rested with respondent no. 1-State Government to select either of them. So far as the decision making process is concerned, the aforementioned facts and circumstances demonstrate that though the proposal of respondent no. 3 was deficient, the defects were cured before issuing LOI to it and subsequently the final permission was granted. Therefore, as far as the decision making process is concerned, we do not see any defect or error. So far as the allegations regarding exertion of political pressure and the decision being based on extraneous reasons, except the bald allegation in the petition memo nothing has been produced and is available to substantiate such allegations.

16. If ultimate discretion vests with the State Government under Section 109 of the Universities Act to grant or refuse permission for starting a new

college, when the LOI and permission could be issued only to the one amongst the proposals of the institutes competing against the same point/location, in the absence of strong and convincing circumstances, the discretion exercised by the State Government in granting LOI and final permission to respondent no. 3 cannot be interfered with.

17. The petition is dismissed.

18. Rule is discharged.

(SHAILESH P BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-