



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

**REVIEW APPLICATION NO.185 OF 2018
IN
WRIT PETITION NO.5883 OF 2017**

Walmiki Sevabhavi Trust, Bhokar,
Through its Secretary,
Nagnathrao s/o Laxmanrao Ghisewad,
Age: 52 years, Occu: Agri./Social Work,
R/o. Bhokar, Taluka Bhokar,
District Nanded.

..Applicant

Versus

1. The State of Maharashtra,
Through its Secretary,
Higher and Technical Education Department,
Mantralaya, Mumbai-32.
 2. Director of Higher and Technical Education,
Aurangabad Divisions, Aurangabad.
 3. Swami Ramanand Teerth Marathwada,
University, Nanded,
Through its Registrar.
 4. The Director,
Board of College and University Development,
Swami Ramanand Teerth Marathwada University,
Nanded.
- ..Respondents

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Mr. R. N. Dhorde, Senior Advocate i/by. Mr. S. S. Gangakhedkar,
Advocate for the Petitioner.

Mr. N. S. Tekale, AGP for Respondent Nos.1 and 2.

Mr. U. S. Malte, Advocate for Respondent Nos.3 and 4.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

DATED : 26th FEBRUARY, 2024.

ORDER (Per: S. G. Chapalgaonkar, J.):

1. The applicant seeks review of the judgment and order dated 15.03.2018 passed by this Court in Writ Petition No.5883/2017 by which the respondents-Authorities were directed to consider the proposal of the applicant-Trust for grant of permission to run Arts and Science College from the Academic Year 2018-2019, if as per perspective plan the Arts and Science College is permissible at Bhokar, District Nanded for the said Academic Year.

2. The applicant contends that initially the applicant had approached this Court by way of Writ Petition No.5883/2017 thereby raising challenge to the order dated 13.02.2017 passed by the respondent no.1-State of Maharashtra by which proposal of the applicant-Trust for starting new college at Bhokar, from Academic Year 2016-2017 was rejected. The Writ Petition was contested by the respondent-State by filing affidavit-in-reply. This Court took the note of contentions of applicant that he has removed all deficiencies in the proposal including objections as regards to land and building and raised construction of 17,500 square feet to meet norms. Accordingly this court directed the respondent-State to reconsider applicant's proposal for ensuing Academic Year i.e. 2018-2019, although, same was recommended by the University for the year 2015. However, this court clarified that the proposal shall be considered as per perspective plan for the Academic Year 2018-2019. The Writ Petition No.5883/2017 was accordingly disposed of vide order dated 15.03.2018.

3. It appears that in pursuance of the aforesaid order the applicant's proposal could not be favorably considered, since University communicated to the State Government that for the Academic Year 2018-2019 the Arts and Science Womens College is not included in the perspective plan.

4. Mr. Dhorde, learned Senior Advocate appearing for the applicant would submit that this Court after considering the submissions and material on record directed the respondent-Authorities to reconsider the proposal that was positively recommended by the University for opening of new college at Bhokar. The certain deficiencies were pointed out in the proposal. The applicant has scrupulously complied with those requirements. The huge amount is invested in complying the deficiencies. The petitioner-Institution made ready the necessary infrastructure in tune with the UGC guidelines and University requirements. However, by giving technical reasons that the Womens College is not proposed at Bhokar as per perspective plan for the Academic Year 2018-2019, the petitioner is refused permission to open college.

5. Mr. Dhorde, learned Senior Advocate relies upon the observations of the Supreme Court of India in the matter of ***Shivaji University Through Director Vs. Bharti Vidyapeeth Through Joint Secretary***¹ and submits that in the year 2015 the perspective plan shows requirement of Womens College at Bhokar. However, when in pursuance of order passed by this Court, the petitioner complied with all the deficiencies, respondent refused consideration of proposal giving reason that as per perspective plan for the Academic Year 2018-2019 no college is proposed at Bhokar. He would submit that in fact proposal ought to have been considered in light of the perspective plan as published in the year 2015, in response to which the applicant had applied for permission. He submits that University felt need of women's College at Bhokar in the year 2015, accordingly point was included in perspective plan. Till this date no College is granted at that place, therefore, now, respondents-Authorities cannot be allowed to contend that perspective plan for Academic Year 2018-2019 does not include proposed location for new college and deny permission to the

1 1999 AIR (SC) 1762.

petitioner. He would submit that the respondents are taking disadvantage of directions of this Court by which the consideration of the proposal of the applicant was conditioned subject to availability of location in the perspective plan for the Academic Year 2018-2019. Mr. Dhorde, learned Senior Advocate relied upon the observations of this Court in case of ***Namita Education and Welfare Society Vs. State of Maharashtra and Anr., (Writ Petition No.1959/2017)*** dated ***17.11.2017*** and ***Bhartiya Vaidyak Samanvaya Samiti Vs. State of Maharashtra and Others***². He would, therefore, submit that review application needs to be allowed and direction needs to be given reconsider the applicants proposal as per perspective plan of 2015, existing at the time of submission of the proposal, instead as per perspective plan for 2018-2019, as directed by order under review.

6. Having heard Mr. Dhorde, learned Senior Advocate for the applicant, Mr. Tekale, learned AGP for respondent nos.1 and 2, so also Mr. Malte, learned Advocate appearing for respondent nos.3 and 4. we find that, the applicant had responded to the Notification issued by the University in the Month of October 2015 thereby calling upon the interested Educational Institutions to submit the proposal for opening of new Colleges at identified locations as per perspective plan for the Academic Year 2016-2017. Since, women's College was proposed at Bhokar, applicant had submitted a proposal showing its interest to start new College. It appears that, the applicant's proposal was turned down mainly on the ground that the constructed area was bereft of norms and the land under construction received belated N.A. permission under Section 44 of the Maharashtra Land Revenue Code. Further, the requisite bank balance of Rs.5,00,000/- was not certified. While impugning rejection of proposal, submission was made on behalf the applicant that he is ready to remove all deficiencies. Even it was represented to this court that current perspective plan for the Academic

Year 2018-2019 also depicts availability of location for Arts and Science College at Bhokar.

7. This Court on the basis of submissions and representation made on behalf the applicant, passed the order as under:

*“The respondents shall consider the proposal submitted by the petitioner and recommended by the university in 2015, for the academic year 2018-2019 afresh. The respondents may carry out the measurement through its competent person in the presence of the petitioner. The petitioner may produce the N.A. certificate issued to it by the Collector with the respondent authority within a period of three weeks from today. The petitioner may also produce fresh certificate of the financial institution showing the minimum balance required as per the condition. **The respondent authority shall consider the said proposal of the petitioner afresh for academic year 2018-2019, if as per the perspective plan the Arts and Science college is permissible at Bhokar, Tq. Bhokar, Dist. Nanded for academic year 2018-2019.** The same shall be considered expeditiously and preferably by the end of May 2018. The writ petition is accordingly disposed of. No costs.”*

8. It appears that consequent upon the aforesaid order, the University made the communication dated 18.05.2018 to the State Government, specifically indicating that, perspective plan for the Academic Year 2018-2019 do not include location at Bhokar for the grant of new College.

9. At this stage, reference can be given to certain observations of the Supreme Court of India in the matter of review jurisdiction available to the court. In paragraph no.56 in case of **Lily Thomas and Others Vs. Union Of India and Others**³ the Supreme Court of India observed thus:

“It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in

3 (2000) 6 Supreme Court Cases 224.

disguise. The mere possibility of two views on the subject is not a ground for review.”

10. Similarly taking into account the purport and limit of the provision contained under Order 47 Rule 1 of the Code of Civil Procedure the jurisdiction to review of order can be exercised by the Court when error apparent on the face of record has been surfaced, but not because some different view is possible.

11. Apparently, this Court acceded to representation made by the petitioner regarding availability of location in current perspective plan for 2018-2019 and passed the order, hence, applicant cannot now turn around and seek modification of such direction to consider his proposal as per original perspective plan for 2015. Present review is opted when applicant realized that his statement was not well informed.

12. Chapter X of the Maharashtra Public Universities Act, 2016 provides for the procedure for permission, affiliation and recognition of the new college and institution. Section 107 (1) of the Act, 2016 provides that the university shall prepare comprehensive perspective plan for every five years and get the same approved by Commission. Such plan shall be prepared for the location of colleges and institutions of higher learning in a manner ensuring comprehensive equitable distribution of facilities for higher education keeping regards to the needs of particular areas within the jurisdiction of the university. Section 109 of the Act, 2016 provides that the university to call for proposal for opening new colleges or institutions of higher learning. The Sub-Clause (2) specifies that no application for opening new college or institution of higher learning, which is not in conformity with the perspective plan shall be considered by the university. If the said provisions are considered in light of the contention of the petitioner, the

modification sought by way of review is inconsistent with the scheme of the Act. Once it is confirmed by the University that for the Academic Year 2018-2019 the place of the petitioner's interest is not included in the perspective plan, it would be impermissible for this Court to issue any direction inconsistent with the statutory scheme and for that purpose review own order passed earlier.

13. It is trite law that prayer for review of order can be entertained by Writ Court on limited grounds as indicated under Order 47 of the Code of Civil Procedure. Apparently, none of such ground is available in the present case. The judgments relied upon on behalf of the applicant are not applicable in the facts of the present case. In our considered view, there is no substance in Application. Consequently, Review Application stands rejected.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE