



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

WRIT PETITION NO. 5423 OF 2024

Shri Sant Shiromani Manmath Swami
Shikshan Prasarak Mandal, Shevdi (Ba.)
Tq. Loha, District : Nanded.
Through its Secretary namely,
Manohar Babarao Dhonde,
Age : 61 years, Occu. : Agril.,
R/o Shevdi (Ba.), Tq. Loha,
District Nanded.

.. Petitioner

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Higher and Technical Education
Department, Mantralaya,
Mumbai – 32.
- 2) Director of Higher and Technical
Education, Maharashtra State, Pune.
- 3) Joint Director of Higher and Technical
Education, Latur Region, Latur.
- 4) Swami Ramanand Teerth Marathwada
University, Nanded, Vishnupuri,
Nanded through its Registrar.
- 5) Bhimashankar Shikshan Sanstha,
Shiradhon, Tq. Kandhar,
District Nanded,
Through its President/Secretary

.. Respondents

Shri Ankush N. Nagargoje, Advocate for the Petitioner.
Shri Sarang P. Joshi, A.G.P. for the Respondent Nos. 1 to 3.
Shri A. M. Gaikwad, Advocate for the Respondent No. 4.
Shri Satyajit S. Bora, Advocate h/f Shri S. V. Gundre, Advocate
for the Respondent No. 5.

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

CLOSED FOR JUDGMENT ON : 01.10.2024
JUDGMENT PRONOUNCED ON : 09.10.2024

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

. Rule. Rule is made returnable forthwith. With the consent of parties heard finally at the admission stage.

2. The petitioner is invoking jurisdiction of the High Court under Article 226 of the Constitution of India for challenging Letter of Intent (for short “LOI”) dated 15.02.2024 issued in favour of the respondent No. 5 and soliciting directions :

- i) to delete location of village Shiradhon, Tq. Kandhar, Dist. Nanded from perspective/annual plan,
- ii) to quash perspective/annual plan to the extent of that location,
- iii) to prepare annual plan in accordance with law,
- iv) after filing of the petition amendment was solicited and final permission granted to the respondent No. 5 vide Government Resolution dated 15.07.2024 is also questioned.

3. The petitioner runs a senior college in faculties of Arts, Science and Commerce at village Usmannagar, Tq. Kandhar,

Dist. Nanded in pursuance of LOI dated 31.01.2020 and final permission dated 15.06.2021. The respondent No. 5 is granted LOI and the final permission to run a senior college at village Shiradhon, Tq. Kandhar, Dist. Nanded. The distance between two places is about three (03) Kilometers. The perspective plan under Sec. 107 of the Maharashtra Universities Act, 2016 (for the sake of brevity and convenience as to the 'Act') was published for the period 2024-2029 proposing to allot 23 colleges in District Nanded at various locations. Neither any location at village Shiradhon, nor at any place in Kandhar taluka was earmarked in the perspective plan.

4. The location at Shiradhon, Tq. Kandhar, Dist. Nanded was sought to be introduced vide letter dated 03.11.2023 addressed by the respondent No. 1 to the respondent No. 4/university in the annual plan of 2024-2025. Thereafter advertisement was issued on 06.11.2023 calling for the proposals for issuing LOI. The respondent No. 5 applied for the location at Shiradhon. The respondent No. 4 scrutinized the proposal and recommended it to the respondent No. 1. The LOI was issued to the respondent No. 5 by Government Resolution dated 15.02.2024. The final permission was granted by Government Resolution dated 15.07.2024. Hence this petition.

5. The petition is contested by all the respondents by filing affidavits in reply. The common thread of their contention is that after following due procedure of law, LOI and final permission was granted to the respondent No. 5. Due procedure of law was

followed to introduce the location in question in the annual plan of 2024-2025. It is further contended that the Commission approved the perspective plan for the year 2024-2025 vide order dated 22.09.2023. The decision was reviewed considering need of new places. With the approval of Commission new locations were introduced in the annual plan and those were communicated by the respondent No. 1 vide letter dated 03.11.2023, which is inclusive of the location in question.

6. The respondent No. 1 by separate affidavit in reply reiterated the stand of the respondent No. 4-university. It is additionally contended that a meeting of Maharashtra State Higher Education and Developments Commission was held for earmarking new places in the perspective plan taking into consideration need and demand of higher learning in particular area and accordingly new places were introduced as per Sec. 77 of the Act. Thereafter, the respondent No. 1 issued letter on 03.11.2023 for introducing new locations including location at village Shiradhon, Tq. Kandhar, Dist. Nanded.

7. The petitioner and the respondents filed their affidavits and rejoinders countering rival contentions. However, they restricted their submissions which are dealt with in foregoing manner, shorn off unnecessary details.

8. The learned counsel for the petitioner Mr. Ankush N. Nagargoje made following submissions :

- (a) The annual plan of 2024-2025 providing location at Shiradhon is not in consonance with perspective plan of 2024-2029, as Shiradhon was not included in the perspective plan. Therefore, LOI and permission given to the respondent No. 5 are illegal.
- (b) There is violation of guidelines issued by Dr. Narendra Jadhav Committee as the distance between petitioner's college at Usmannagar and Shiradhon is hardly three (03) Kilometers leading to unhealthy competition.
- (c) The petitioner has a reasonable apprehension that starting new college will adversely affect strength of students which may lead to closing down of the college.
- (d) There is violation of statutory timeline provided by the University Act and insertion of new location vide letter dated 03.11.2023 may be good for academic year 2025-2026 and not for 2024-2025.
- (e) The learned counsel for the petitioner relied on the following judgments of this Court :
 - I. Judgment dated 12.07.2024 in Writ Petition No. 4282 of 2023 in the matter of Trimurti Pawan Pratishthan Vs. The State of Maharashtra and others.
 - II. Judgment dated 26.08.2024 passed in Writ Petition No. 2093 of 2024 in the matter of Nisargdeep Shikshan Prasarak Mandal, Aurangabad Vs. The State of

Maharashtra and others.

III. Judgment dated 29.07.2024 in Writ Petition No. 8734 of 2023 in the matter of Shri Gajanan Shikshan Prasarak Mandal's Toshniwal Arts, Commerce and Science College, Sengaon Vs. The State of Maharashtra and others.

09. The respondents have advanced submissions as per their affidavits in reply to support LOI and final permission given to the respondent No. 5 to start a college. It is additionally submitted by learned counsel Mr. Satyajit Bora appearing for the respondent No. 5 that though the respondent No. 5 – college has started from July 2024, the strength of the students of the petitioner has not been affected. The petitioner could secure the admission to its intake capacity and the apprehension of the petitioner is misplaced. There is great need of another college in the vicinity.

10. We have considered rival submissions of the parties advanced across the bar. We have already taken a view in the matter of **Trimurti Pawan Pratishthan Vs. The State of Maharashtra and others** (supra) that the location and starting of new college as notified in the annual plan needs to be in consonance with the perspective plan. If it is not so then university cannot issue notification calling proposals.

11. Thereafter in the matter of **Nisargdeep Shikshan Prasarak Mandal, Aurangabad Vs. The State of**

Maharashtra and others (supra) relying on the statutory provisions, we have taken a view that annual plan has to be in consonance with the perspective plan. We prefer to rely on paragraph Nos. 21 and 22 of the judgment, which are as under :

“21. The perspective plan under Section 107 of the Act is published for five years from 2024 to 2029. There cannot be a perspective plan for 2024-2025 which is a misnomer frequently referred to in correspondence dated 22.09.2023, 03.11.2023, public proclamation dated 06.11.2023 and the affidavit-in-reply of respondents. The annual plan is prepared by Board of Deans and it has to be in consonance with the perspective plan. It is relevant to notice following provision Section 37 (1) (i) of the Act :

“37. Powers and Duties of Board of Deans.-

(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.”

The Board of Deans prepares the annual plan. Then the Management Council recommends it for the location of the Colleges prepared by Board of Deans. Therefore, academic council approves it. This is the frame work for preparing annual plan under the statute.

22. The perspective plan is prepared by the University under Section 107 (5) of the Act. The Board of Deans under Section 37 (1) (h) of the Act, prepares the perspective plan

and under clause (i) prepares annual plan. The perspective plans and annual plans are recommended by Management Council under Section 31 (y) of the Act. Thereafter, Academic Council approves those plans under Section 33 (1) (q) of the Act. The perspective plan prepared by the University needs an approval by Commission under Section 77 (1) (b) of the Act. Thus there is distinction between perspective plan and annual plan. As per Section 37 (1) (i) of the Act the annual plan of the University for opening new Colleges shall be in accordance with the perspective plan in all respect including the location.”

12. In the matter of **Shri Gajanan Shikshan Prasarak Mandal's Toshniwal Arts, Commerce and Science College, Sengaon Vs. The State of Maharashtra and others**, we have emphasized on the parameters of distance as laid down by Dr. Narendra Jadhav Committee as follows :

“9. One need not delve as far as the sanctity of the distance between the two institutes or colleges running the same course. Though some competition is inevitable, permitting two institutes to run same courses in proximity could lead to unhealthy competition, thereby, adversely affecting the quality of education. Even without going into any other aspect, if this Government Resolution dated 15.09.2017 contemplates the application by the Management for starting a new college to precisely state in column No.10, whether any other institute is running the same courses within the periphery of 15 km, one can safely proceed on the premise that this distance criteria has its own importance, not because of the recommendations of the Committee headed by Dr. Narendra Jadhav, but even without that, since the Government itself had thought it fit and had resolved to incorporate the distance criteria.

10. Again, whether the distance of 15 km provided in Annexure 'A' to be filled in by the prospective colleges is rigid or otherwise need not be addressed in this petition, more so when there is no dispute about the fact that the distance between the petitioner's college and that of respondent No.3 to which final permission has been accorded is around 5 km and both these colleges situate in rural area."

13. There is no dispute that location of Shiradhon, Tq. Kandhar, Dist. Nanded was not included in the perspective plan for the period 2024-2029 prepared by the respondent No. 4- university which was approved by the Commission U/Sec. 77 of the Act. The petitioner is running a college at village Usmannagar, Tq. Kandhar, Dist. Nanded since 15.06.2021. The distance between Usmannagar and Shiradhon is three kilometers. The location Shiradhon was for the first time introduced in the annual plan of 2024-2025 vide letter dated 03.11.2023.

14. The respondents tried to justify insertion of location Shiradhon in annual plan of 2024-2025 by referring to the correspondence dated 22.09.2023 and 03.11.2023 issued by the respondent No. 1 to the respondent – university. It is tried to be justified that initially few locations including Shiradhon were not in the annual plan for 2024-2025 as proposed, but lateron it was thought fit by the Commission to introduce those and, therefore, letter dated 03.11.2023 was issued incorporating location in question.

15. The affidavit in reply as well as correspondence placed on record do not spell out particulars of the meeting or the resolution of the Commission for introducing the location in question. This plea is clearly an after thought and we have reservations for it. The respondents could have easily placed the details on record. We do not approve the stand of the respondent No. 1 or the respondent No. 4 – university that taking into consideration demand and need of higher learning location Shiradhon was introduced.

16. We have already taken a view in the matter of **Trimurti Pawan Pratishtan Vs. The State of Maharashtra and others** and **Nisargdeep Shikshan Prasarak Mandal, Aurangabad Vs. The State of Maharashtra and others** (supra) that annual plan has to be in consonance with the perspective plan. Shiradhon was not included in the perspective plan of 2024-2029. It could not have been introduced vide letter dated 03.11.2023 in the annual plan of 2024-2025. The annual plan for 2024-2025 to the extent of location Shiradhon is against the provision of Section 37(1)(i) of the Act.

17. There is further impediment of Section 109(2) of the Act, which prohibits the university from receiving any proposal/application for opening a new college, which is not in conformity with the perspective plan. As per Section 109(2) of the Act, the respondent No. 4 – university could not have entertained the proposal of the respondent No. 5. The proposal

was invalid and consequentially its recommendation by the respondent No. 4-university is also bad in law. We have no *iota of* doubt that LOI granted vide Government Resolution dated 15.02.2024 to the respondent No. 5 and final permission issued to it vide Government Resolution dated 15.09.2024 are against the statutory provisions and are unsustainable.

18. The manner in which the location Shiradhon was tried to be introduced is *de hors* the statutory procedure. It is not permissible to make any changes in the location prescribed by perspective plan in such a manner. We, therefore, accept the submissions of the learned counsel for the petitioner in this regard.

19. Considering the distance between petitioner's college and that of the respondent No. 5, the guideline of 20 KM for rural area stipulated by Dr. Narendra Jadhav Committee has been violated. The guideline for the distance are sacrosanct and have been consistently followed by the universities which are rightly demonstrated by the petitioner by placing necessary documents on record for denying the proposals of Shanti Pratisthan in the year 2019-2020 to open college at Phulambri, Tq. Pulambri, Dist. Aurangabad and Saraswati Shikshan Prasarak Mandal for opening college at Jafrabad. The guidelines of Dr. Narendra Jadhav Committee were directed to be followed by the judgment of the coordinate bench delivered on 29 November 2021 in the group of petitions led by **Writ Petition No. 7417 of 2020 in the matter of Mawala Bahuddeeshiya Shikshan Sevabhavi**

Sanstha Bhokardan Vs. The State of Maharashtra.

20. Our attention is adverted to letter dated 16.01.2023 issued by the respondent No. 1 to all the universities in the State of Maharashtra to prepare perspective plan for 2024-2029 in accordance with the guidelines of Dr. Narendra Jadhav Committee. Under these circumstances petitioner is justified in contending that it is impermissible to open a college within 5 Kilometers from the petitioner's college.

21. Having recorded that LOI and final permission of the respondent No. 5 are contrary to law and the guidelines of Dr. Narendra Jadhav Committee, we are not persuaded by the submissions of the learned counsel Mr. Satyajit Bora that for the present academic year intake of the petitioner has not been adversely affected. It is not the question of unhealthy competition or adverse effect in running of a college for a particular year. The adverse effect on running the petitioner's college in future cannot be ruled out. It is informed that the students have been admitted in the respondent No. 5 college. The respondent Nos. 1 to 4 would be at liberty to accommodate the students in adjoining colleges or to permit them to continue the education in this year only. However, the respondent No. 5 shall not claim any equity, if the students are permitted to be continued till completion of academic year 2024-2025.

22. For the reasons recorded above, we pass following order :

ORDER

- A. The writ petition is allowed partly.
- B. The impugned Government Resolution dated 15.02.2024 granting Letter of Intent to the respondent No. 5 and the Government Resolution dated 15.07.2024 granting final permission to the respondent No. 5 are quashed and set aside.
- C. The respondent Nos. 1 to 4 shall be at liberty to take decision in respect of students admitted by respondent No. 5 for the present academic year.
- D. In case the students are permitted to continue with respondent No. 5 for the present academic year, it shall not be entitled to claim equity.
- E. Rule is made absolute in above terms.

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

bsb / Oct. 24