



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.8734 OF 2023

Shri Gajanan Shikshan Prasarak  
Mandal's Toshniwal Arts, Commerce  
& Science College, Sengaon,  
Dist. Hingoli through its President  
Shri Brijgopal s/o Ramnarayan Toshniwal ... **PETITIONER**

**VERSUS**

1. The State of Maharashtra  
through its Secretary,  
Higher and Technical Education  
Department, Mantralaya, Mumbai - 32
2. Swami Ramanand Tirth Marathwada  
University, through its Registrar,  
Nanded, Tq. & Dist. Nanded
3. Vidyashakti Shikshan Prasarak  
Mandal's Late Shankarrao Chilgar  
B.A. & B.Sc. College, Risod Road,  
Tq. Sengaon, Dist. Hingoli  
through its President  
Bhaskar s/o Ramrao Bengal ... **RESPONDENTS**

...  
Advocate for petitioner : Mr. P.R. Katneshwarkar h/f. Mr. P.N. Kalani  
A.G.P for respondent No.1 : Mrs. Kalpalata Patil Bharaswadkar  
Advocate for respondent No.2 : Mr. S.R. Bagal  
Advocate for respondent No.3 : Mr. V.D. Hon, Senior advocate i/b.  
Mr. A.V. Hon

...

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

**Reserved on : 18.07.2024  
Pronounced on : 29.07.2024**

**ORDER ( PER : MANGESH S. PATIL, J.) :**

Heard. Rule. Rule is made returnable fourthwith. At the joint request of the parties the matter is heard finally at the stage of admission.

2. The petitioner - Institute which runs an Arts, Commerce and Science College is questioning the letter of intent (LOI) granted by the State Government to respondent No.3 for running a new Arts and Science College, in the light of provisions of Section 109 of the Maharashtra Public Universities Act, 2016 (hearing after the Universities Act).

3. The learned advocate Mr. Katneshwarkar for the petitioner would submit that petitioner has been running Arts, Commerce and Science College since last more than 20 years at Sengaon, Taluka Sengaon, district Hingoli. Pursuant to the perspective plan of respondent No.2 - University and the annual Plan, it invited applications for starting new colleges for the academic year 2023-24 at location Kolsa, Taluka Sengaon. Respondent No.3 - Management put up a proposal for starting a new Arts and Science College. However, the location notified is barely within a distance of 5 km from the location of petitioner's college. In order to curb unhealthy competition, thereby, affecting the quality of the education, a committee appointed by the State Government headed by Dr. Narendra Jadhav had submitted recommendations which are being followed by the State Government. The recommendations required at least 20 km distance between the two colleges in the rural areas. When the State Government has accepted this recommendations, decision of

respondent No.2 - University making a favourable proposal of respondent No.3 and decision of the Government to grant LOI and final permission is contrary to the recommendations of Dr. Narendra Jadhav's committee. Once having accepted the recommendations, the State Government could not have retracted. No special reasons are assigned for ignoring such recommendation and the order directing LOI and final permission be quashed and set aside.

4. The learned advocate for respondent No.2 - University by referring to the affidavit-in-reply filed by its Registrar would submit that the recommendations of Dr. Narendra Jadhav committee are merely directory and not mandatory. The proposal of respondent No.3 was pursuant to a five year perspective plan prepared under section 107 for the years 2019–2024. For the first time the State Government has now directed perspective plan for the next five years period of 2024–2029 to be prepared taking into consideration the recommendations of Dr. Narendra Jadhav committee vide its communication dated 16.01.2023. He would, therefore, submit that since the LOI and final permission issued to respondent No.3 was pertaining to the previous perspective plan, when there were no such directions before preparing a perspective plan, petitioner cannot be allowed to question those by referring to the guidelines in the report of Dr. Narendra Jadhav committee.

5. The Learned AGP referring to the affidavit-in-reply filed by

the Joint Director, Higher Education, Nanded Region, supports the decision of the State Government in granting LOI to respondent No.3. He submits that all the guidelines were duly followed and only after ensuring that the proposal of respondent No.3 was compliant with all the requisite that LOI and permission was issued. He would submit that though the recommendations of Dr. Narendra Jadhav committee have been accepted, those have been accepted in principle but were not expressly included in the Government Resolution dated 15.09.2017. It is only after a positive recommendation of respondent No.2 - University that LOI was issued as also final permission to respondent No.3, by the order dated 15.06.2023.

6. Mr. Hon, learned Senior advocate for respondent No.3 would oppose the petition by referring to the affidavit-in-reply. He would submit that all the necessary compliances were made pursuant to the proposal approved by respondent No.2 - University and LOI was issued as also the final permission. He would also submit that the Government has a discretion in the light of provision of Section 109 (3)(d) to grant LOI. The discretion has been exercised judiciously by examining all aspects. The recommendations of Dr. Narendra Jadhav committee are not mandatory. Once the permission has been granted to respondent No.3 by the State, it cannot be questioned by petitioner. It is doing so to obviate healthy competition and the petition be rejected.

7. We have carefully considered the rival submissions and perused the papers. There cannot be two opinion regarding the discretion

vesting with the State Government in light of Section 109 (3)(d) for granting LOI and final permission for starting a new college or a new course. It is abundantly clear that even where the University has forwarded a negative proposal in respect of some management, still the State Government has the power and discretion to grant permission. Obviously, it cannot be indiscriminate or arbitrary, rather will have to be based on some objective material, demonstrating exercise of the discretion for some special reasons. Suffice for the purpose to refer to the observations of the division bench of this Court in the matter of **Gurukul Bahuuddeshiya Sevabhavi Pratishthan Vs The State of Maharashtra and Ors.; Writ Petition No.9155/2020 and connected writ petitions** (Aurangabad bench) dated 31.08.2021. Relevant paragraphs read as under :

*“14. The general rule appearing in section 109(3)(d) is that out of applications recommended by the University the State Government may grant Letter of Intent. Proviso to Clause (d) of sub-section (3) of section 109 carves out an exception viz. in exceptional cases the Government may grant Letter of Intent though not recommended by the University for the reasons to be recorded in writing. According to Webster's International Dictionary of English Language “Exceptional which is itself an exception and so is out of ordinary, that is, exceptional, to which exception may be taken.” According to Murray's New English Dictionary Exceptional means “of the nature of forming exception; out of the ordinary course, unusual, special.” The Government has to arrive at the conclusion that exceptional circumstances exist to overrule the negative recommendations of the University. The University while negating the proposals of the respondents amongst other objections had observed that students of the region would not suffer. The Government while considering such proposal ought to have arrived at subjective satisfaction based on objective assessment that exceptional*

*circumstances still exist for establishing new college on the said location for the welfare of the students. The same ought to be supported by relevant statistics.*

15. *For meeting out an exceptional case strong reasons have to be recorded in writing that would outweigh the negative recommendations of the University. The rule requiring recording of reasons must be observed in letter and spirit. Mere pretence of compliance by vague and general words is not enough. Reasons are the lifeline of any order. The order should reflect the application of mind of the authority while passing the order and it is the reasons which would depict the same. The obligation to record reasons operates as a deterrent against the possible arbitrary action. Reasons are link between the materials on which certain conclusions are based and the actual conclusion. Reasons discloses how the mind is applied to the subject matter for a decision. The reason should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable. In the present case the reasons recorded should demonstrate carving out an exceptional case to be considered though negatively recommended by the University.*
16. *In the present case, we do not find that the Government has considered each and every proposal independently threadbare as an exceptional case. If the Government considers the proposals negatively recommended by the University without adhering to the proviso to Clause (d) of sub-section (3) of section 109 of the Act, 2016, then the proviso would loose its efficacy as an exception to general rule and would be rendered superfluous and a dead letter. In the present matter, we do not find the said exercise carried out meticulously by the Government. At least perusal of the file produced by the learned In-charge Government Pleader does not depict so. It has been observed by the Hon'ble Apex Court in case of **Gurdial Singh Fijji v. State of Punjab** reported in (1979) 2 SCC 368 that rubber-stamp reason is not enough. In another Judgment of the Hon'ble Apex Court in case of **S.N. Mukherjee v. Union of India** reported in (1990) 4 SCC 594 it has been observed that recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
17. *The State was exercising it's statutory power. The proviso to Clause (d) of sub-section (3) of section 109 of the Act, 2016 mandates the State Government to exercise its powers in exceptional case and for the reasons to be recorded in writing. An order passed exercising its powers under proviso to Clause (d) of sub-section (3) of section 109 of the Act, 2016 without recording appropriate*

*and valid reasons would tantamount to arbitrary exercise of powers. Arbitrariness is antithesis to the rule of law, justice, equity, fair-play and good conscience. An arbitrary action cannot be sustained. Arbitrariness has no role in society governed by rule of law.”*

8. Bearing in mind, such broad principles let us approach the controversy. Admittedly, in order to streamline the proposals for starting new colleges in light of provisions of Section 109 of the Universities Act, the State Government had issued certain guidelines vide Government Resolution dated 15.09.2017. Pertinently, it contemplates and provides for applications to be made in accordance with the Annexure ‘A’ form. The scrutiny-sheet is expected to be in Annexure ‘B’, other checklist is provided in Annexure ‘C’, Annexure ‘D’ contains the particulars regarding area for the infrastructure *qua* the office, lab etc. Admittedly, Annexure ‘A’ contains column Nos. 5 and 10 expressly requiring the proposed institute to mention giving all the particulars, including name in respect of the colleges which are already running in the periphery of 15 km from the place where the new college is to be established. Irrespective of the fact whether the guidelines laid down by Dr. Narendra Jadhav committee are merely directory or mandatory, this Government Resolution dated 15.09.2017 contemplates, as one of the parameters to be considered while granting or refusing LOI with reference to the distance between the existing college and the new college sought to be established.

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.

11. In light of above observations if one examines the application submitted by respondent No.3 about which there was a positive recommendation by respondent No.2 – University, pursuant to our directions, the learned advocate for respondent No.2 - University has placed on record a photocopy of the entire compilation which was forwarded to the State Government by the University for grant of LOI.

The application submitted by respondent No.3 in Annexure 'A' clearly demonstrates that in column No.5 and column No.10 no information was furnished by it regarding the existing colleges running Arts and Science faculties within a radius of 15 km. Column No.5 has been left blank and in column No.10 the information furnished reads 'Nil'. It is quite clear that respondent No.3 in its affidavit-in-reply and also respondent No.1 - State and respondent No.2 – University, in their respective replies have not expressly denied the fact that the petitioner's Arts and Science college, which has been running for last more than two decades situate within a distance of 5 km from the place where respondent No.3 has been granted permission to set up a new Arts and Science college. Conspicuous silence in the affidavit-in-reply filed by respondent No.1 - State about the circumstances which had weighed with it while granting LOI and final permission to respondent No.3 makes it abundantly clear that it has, merely for the reasons best known to it, has chosen to ignore the fact that the purpose of providing column Nos.5 and 10 in Annexure 'A' while submitting the application by the prospective colleges. It has chosen to ignore that respondent No.3 had not provided the particulars but rather had suppressed it. Such a conduct of respondent No.2 - University and that of the State Government in ignoring this distance criteria which could have ramifications, having the potential of giving rise to unhealthy competition leading to adversely affecting the quality of education, cannot be countenanced.

12. In an appropriate case, when the discretion vest with the State Government, it may for a well reasoned discretion ignore the distance between the existing institute and the proposed one. However, unless there is something to demonstrate and justify such decision of the State Government, like in the present matter, no such leeway can be permitted and tolerated.

13. In the normal course, for the aforementioned reasons, we could have straightway quashed and set aside the LOI and final permission under challenge. However, one cannot lose sight of the fact that the desired location 'Kolsa' must have been a part of the annual plan which in turn must be commensurate with the perspective plan published around 4 to 5 years back. The petitioner had never objected to it. Therefore, it would be appropriate to leave open to respondent No.1 - State to consider the aforementioned aspects if it intends to reconsider the proposal of the respondent No.3.

14. The writ petition is partly allowed. The impugned LOI dated 15.07.2022 and final permission dated 15.06.2023 is quashed and set aside. It would be open for respondent No.1 to reconsider the proposal of respondent No.3, subject to the observations made herein above.

**[ SHAILESH P. BRAHME ]**  
**JUDGE**

**[ MANGESH S. PATIL ]**  
**JUDGE**