



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

WRIT PETITION NO. 10391 OF 2021

**Ajinta Bahu Uddheshiya Seva Bhavi
Sanstha, Talni, Tal. Sillod,
Dist. Aurangabad.
Through its Secretary,
Ashok Himmatrao Garud
Age : 48 years, Occu. Agri.
R/o. Talni, Tq. Sillod, Dist. Aurangabad.**

...Petitioner

Versus

- 1. The State of Maharashtra
Through its Secretary,
Higher and Technical Education Department,
Mantralaya, Mumbai.**
- 2. Director of Higher Education,
Maharashtra State, Pune.**
- 3. Joint Director of Higher Education,
Aurangabad Region, Aurangabad.**
- 4. Dr. Babasaheb Ambedkar Marathwada University,
University Campus, Aurangabad.
Through its Registrar.**
- 5. Hindustan Education Society,
Andhari, National Kala va
Vanijya Mahavidyalaya, Chinchwan, Tq. Sillod,
Dist. Aurangabad
Through its President,
Abdul Sameer Abdul Sattar.**

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Mr. V.P. Latange, Advocate for the Petitioner.

Mr. D.R. Korde, AGP for Respondent Nos. 1 to 3.

Mr. Amol G. Kale h/f Mr. S.S. Tope, Advocate for Respondent No.4.

Mr. S. R. Sapkal, Advocate for Respondent No.5.

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

RESERVED ON : 1 JULY 2024

PRONOUNCED ON : 10 JULY 2024

JUDGMENT (Per Shailesh P. Brahme J.) :

. Rule. Rule is made returnable forthwith with the consent of the parties.
Head finally at the admission stage.

2. Petitioner/educational institution is challenging letter of intent (hereinafter referred to as LOI for the sake of convenience and brevity) issued by the respondent no.1 in favour of the respondent no.5 vide Government Resolution dated 15.04.2021 under Section 109 (3)(d) of the Maharashtra Public University Act, 2016 (hereinafter referred to as Act) and simultaneously seeking a mandamus for issuing letter of intent to start senior college at Village Amthana, Tq. Sillod, District Aurangabad.

3. The respondent no.4 had issued a proclamation for allotting new colleges for the year 2019-2020. On 21.11.2018, petitioner had submitted proposal in pursuance of the advertisement. The Scrutiny Committee examined the proposal and then respondent/ University submitted report recommending it. In view of the recommendation, the respondent no.1 issued Government Resolution dated 31.01.2019 granting LOI. Petitioner submitted compliance report on 25.02.2019 which was verified by the competent authorities. The petitioner was awaiting final approval.

4. Granting of LOI to the petitioner was challenged by the respondent

no.5 by preferring Writ Petition No.5005/2019. By way of ad interim orders, status quo was directed to be maintained. Then petitioner appeared in the matter and filed civil application for vacating order of status quo. It was informed that 15.06.2019 was the last date for granting final permission. In view of certain deficiencies proposal was rejected. The petitioner was pursuing matter against rejection of proposal. The respondent no.1 issued proclamation inviting proposal for 2021–2022, on 21.12.2020.

5. Petitioner again submitted proposal on 31.12.2020 seeking a senior college at village Amthana. The proclamation included location of Village Amthana as well as Chinchwan. Respondent No.5 also submitted proposal for Amthana and Chinchwan. The Scrutiny Committee considered the proposals and submitted report on 13.02.2021 recommending the proposal of the petitioner. Despite positive recommendation, the proposal of the petitioner was rejected vide letter dated 18.03.2021. At the same time, the proposal of the respondent no.5 was also not recommended by the respondent no.4/University. The respondent no.1 issued G.R. dated 18.05.2021 granting LOI to the respondent no.5's college at Chinchwan. Being aggrieved, the petitioner has preferred this writ petition.

6. Learned Counsel for the petitioner submits that without assigning any reasons much less exceptional ones LOI was granted to the respondent no.5 which is against Section 109 (3)(d) of the Act. The action of the respondent in rejecting the proposal of the petitioner is arbitrary because on the earlier occasion, LOI was granted to the petitioner and on two occasions there was recommendation of the Scrutiny Committee in favour of the petitioner. Learned Counsel would further submit that reasons assigned for rejecting proposal are totally unsustainable and perverse. He would further submit that

grant of LOI in favour of the respondent no.5 is discriminatory and actuated by undue influence of a sitting Minister. He would further submit that the distance between Village Chinchwan and Amthana is only 4 Km. which is against norms laid down by Mr. Narendra Jadhav Committee.

7. Learned AGP Mr. D.R. Korde for the respondent nos. 1 to 3 would support impugned action by referring to affidavit-in-reply. He submits that for the location Amthana, Tq. Sillod, two proposals were received and both were rejected. Petitioner's proposal was not complying with the norms laid down by the Government Resolution dated 15.09.2017. As against that the proposal of respondent no.5 was found to be compatible. It is further submitted that by invoking powers under Section 109 (3)(d), LOI was granted to the respondent no.5 for the location at Chinchwan. He would, therefore, pray to dismiss the petition.

8. Learned Counsel Mr. S.S. Tope appearing for respondent no.4/University opposes the petition.

9. Learned Counsel Mr. S.R. Sapkal appearing for respondent no.5 would vehemently oppose the petition. He would submit that respondent no.1 has rightly granted LOI to his client. The Scrutiny Committee recommended the proposal of the respondent no.5. There was need of a senior college at Chinchwan, considering the location and surrounding villages. He would submit that recommendations of Mr. Narendra Jadhav Committee are not binding. It is further submitted that after receiving LOI, compliance report was submitted and a final permission is also granted. He would therefore pray to dismiss the petition.

10. We have considered rival submission of the parties. The proclamation

issued by the respondent no.4 /university on 21.12.2020 indicates two locations namely Village Amthana and Chinchwan in Taulka Sillod. It further reveals that for Amthana, petitioner as well as respondent no. 5 applied and both the proposals were rejected. The respondent no.5 appears to have applied for location Chinchwan also. The Scrutiny Committee recommended respondent no.5 for LOI, however there was negative recommendation by the University. The respondent no.1 issued LOI to the respondent no.5 by invoking special discretion provided by proviso to Section 109(3)(d) of the Act.

11. For location Chinchwan, LOI is granted to the respondent no.5. The respondent nos. 1 to 3 though filed affidavit-in-reply, have not placed on record exceptional circumstances or the reasons for granting LOI in question, albeit negative recommendation by the University. No exceptional circumstances/reasons are pleaded in the affidavit-in-reply. The respondent no.5 has also not placed on record any reason as to why despite negative recommendation, LOI was issued to it. It is not made clear as to whether deficiencies recorded in the proposal was ever removed by the respondent no.5.

12. It is useful to refer to law laid down by the coordinate bench in the matter of **Gurukul Bahuuddeshiya Sevabhavi Pratishtan Vs. State of Maharashtra and Others, 2022(2) Mh.LJ 419**. Following are the relevant paragraphs :

13. The Government can exercise the powers in exceptional circumstances and for the reasons to be recorded in writing while approving the proposal for grant of Letter of Intent to the college or the institution of higher learning though not recommended by the University.

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.

13. It is the discretion of the State Government to grant LOI if the

institutions are found to be fit and proper as per Section 109(3)(d). In exceptional cases, for the reasons to be recored in writing the proposal having negative recommendation by the University, can also be approved by the State Government. In the present case, we find no objective scrutiny and recording of exceptional reasons for granting LOI to the respondent no.5. Mere statements have been made in affidavit–in–reply of the respondent no.1 to 3, which are not sufficient. Those are mere pretence of compliance by vague and general words. We find that there is non–application of mind. Considering ratio laid down in the matter of Gurukul Bahuuddeshiya Sevabhavi Pratishthan (supra), we have no hesitation to hold that LOI granted to respondent no.5 is unsustainable.

14. Though the petitioner is seeking mandamus for issuing LOI, respondent no.4/University has not recommended its proposal. There is nothing on record to indicate that objective scrutiny has been made by the respondent/University. Petitioner has also not placed on record any specific reasons assigned by the University for not recommending it. We are shown page no.494 of the compilation to indicate the reasons for rejecting the proposal. But it pertains to some other institution. Learned Counsel has even attempted to impress upon us that the reasons for rejecting proposal of petitioner, are unsustainable. We have not come across specific reasons for rejecting the proposal of the petitioner. We are of the considered view that it would be within discretion of the respondent no.1 to consider proposal. We leave it to respondents to reconsider the proposal, instead of expressing any opinion, on its merits. We, therefore pass following order :

ORDER

I. The letter of intent issued to the respondent no.5 vide Government

Resolution dated 17.05.2021 and consequential proceeding/order dated 15.04.2021 are quashed and set aside.

II. The respondent no.1 shall be at liberty to reconsider the proposal of the petitioner if permissible in law on its own merits and communicate the decision to the petitioner.

III. The writ petition is disposed of.

IV. Rule is made absolute in the above terms.

**SHAILESH P. BRAHME
JUDGE**

**MANGESH S. PATIL
JUDGE**

Najeeb...