

Bombay High Court

Dr. D.Y. Patil Pratishthan'S vs 4 Maharashtra State Board For on 9 July, 2014

Bench: Anoop V. Mohta

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5816 OF 2014

Dr. D.Y. Patil Pratishthan's  
Padmashree Dr. D.Y. Patil Polytechnic,  
Through it's Secretary & Trustee,  
Mr. S.S. Dharamghutti,

R.S. No. 865, A-Ward,  
Salokhe Nagar,  
Dist. Kolhapur-416008

...Petitioner.

V/s.

1

Directorate of Technical Education,  
Maharashtra State,  
3, Mahapalika Marg, Dhobi Talao,  
  
Mumbai 400 001.

2

State of Maharashtra,  
The Department of Higher &  
Technical Education,

Through the Government Pleader,  
PWD Building, Fort,

Mumbai-400 023.

- 3 All India Council for Technical  
Education, Through its Western

Regional office and having its  
address at 2nd Floor, Industrial  
Assurance Building, Veer Nariman  
Road, Opp. Churchgate Rly. Station,  
Mumbai 400 020.

- 4 Maharashtra State Board for  
Technical Education, 4th Floor,  
Government Polytechnic, Kherwadi,  
Bandra (East),  
Mumbai-400 051.

...Respondents.

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Mr. S.C. Naidu, Mr. Y.C. Naidu and Mr. Rahul Tanwani i/b M/s. C.R.  
Naidu & Co. for the Petitioner.  
Ms. S.S. Bhende, AGP for Respondents-State.

Mr. Sariputta Sarnath a/w Mr. Swaraj Jadhav for Respondent no.3-  
AICTE.

CORAM: ANOOP V. MOHTA &  
A.A. SAYED, JJ.

DATED : JULY 9, 2014.

ORAL JUDGMENT (PER ANOOP V. MOHTA, J.):-

Rule, returnable forthwith.

In view of the urgency so expressed, heard learned Counsel for both the parties finally.

3 The Petitioner, a Trust running an education Institution has filed the present Petition under Articles 226 and 227 of the Constitution of India for appropriate writ, direction and order and prayed as under:

"a) (i) the Respondent No.2 in it's Higher & Technical Education Department to forthwith issue appropriate Government Resolution/Notification recording the approval granted by AICTE to the Petitioner Institution for A.Y. 2014-15;

(ii) the Respondent No.1 to forthwith include the Petitioner in Centralised Admission Procedure (CAP) for First Year Engineering Courses (Diploma) as approved by AICTE for A.Y. 2014-2015 and to issue Institute Code and further display the name of petitioner on its web portal along with Institute Information, course wise sanctioned intake & choice codes."

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4 "Technical education" and related aspects are controlled

and governed by the All India Council for Technical Education Act, 1987 (For short, "AICTE Act"). The aim and object by the AICTE Act is to co-ordinate and integrate the development of technical education system at all levels throughout the country to provide and promote qualitative technical education in planned manner. The AICTE is required to regulate and ensure proper maintenance of norms and standards in technical education system. It also involves regular performance appraisal for technical institutions and universities. The AICTE, therefore, is under obligation to control the norms and standards for common development of such education in the country.

5 The Act itself provides for grant of approval for starting new technical institutions and for introduction of new courses and variation in intake capacity and permits, in consultation with the agencies concerned. On the basis of this Act, therefore, various authorities, board, council have been created to control and supervise the technical education and all its related aspects. This itself means, the AICTE having various functions and powers and being specialized body is empowered to ensure that all the institutions recognized by the AICTE are possessed of complete infrastructure/staff and other facilities and have capacity of maintaining quality education standards for k 915 wp 5816.14 as.doc imparting the technical education. In (Parshavanath Charitable Trust & Ors. Vs. All India Council for Tech. Edu. & Ors.) 1 the supremacy of AICTE in the field of technical education, is emphasized by the Supreme Court in paragraph Nos. 27 and 28, which read as under:-

"27. The consistent view of this Court has been that where both Parliament and State Legislature have the power to legislate, the Central Act shall take precedence in the matters which are covered by such legislation and the State enactments shall pave way for such legislations to the extent they are in conflict or repugnant. As per the established canons of law, primacy of the Central Act is undisputable which necessarily implies primacy of AICTE in the field of technical education. Statutes like the present one as well as the National Council for Teachers Education Act, 1993, the Medical Council of India Act, 1956, etc. fall within the ambit of this canon of law. The AICTE is the authority constituted under the Central Act with the responsibility of maintaining operational standards and judging the infrastructure and facilities available for imparting professional education. It shall take precedence over the opinion of the State as well as that of the University. The concerned department of the State and the affiliating university have a role to play, but it is limited in its application. They cannot lay down any guidelines or policies in conflict with the Central statute or the standards laid down by the Central body. The State can frame its policies, but such policy again has to be in conformity with the direction issued by the Central body.

Though there is no such apparent conflict in the present case, yet it needs to be clarified that grant of approval by the State and affiliation by the University for increased intake of seats or commencement of new college should not be repugnant to the conditions of approval/recommendation granted by the AICTE. These authorities have to work in tandem as all of them have the common object to ensure maintenance of proper standards of education, examination and proper 1(2013) 3 SCC 385 k 915 wp 5816.14 as.doc infrastructure for betterment of technical educational system.

28. It is also a settled principle that the regulations framed by the central authorities such as the AICTE have the force of law and are binding on all concerned. Once approval is granted or declined by such expert body, the courts would normally not substitute their view in this regard. Such expert views would normally be accepted by the court unless the powers vested in such expert body are exercised arbitrarily, capriciously or in a manner impermissible under the Regulations and the AICTE Act.".....

6 It is worth to note the observations made by the Apex Court in Jayamatha Engineering College Vs. Union of India & Ors.

as under:-

"There can be no gainsaying that every eligible student/candidate desirous of participating in further education, especially where resources and institutions are available, should be accommodated so long as academic standards are not undermined."

7 The annual approvals by the AICTE for establishment of new colleges/technical course/intake capacity/change of courses are also subject to sanction by AICTE being highest/supreme body constituted for the same. The requisite approval process and procedure (handbooks) are published from time to time. All the parties are aware of the same, including the Respondents. A specific procedure for approval of new institutions and/or extension of approval and increase in intake capacity in already approved institutions is also required to be 2Writ Petition (Civil) No. 538/2014 dated 26/06/2014 k 915 wp 5816.14 as.doc followed by all. Various provisions are provided to deal with the violation of regulations, norms and requirements and respective obligations. The Respondents' officials/officers are also need to participate in the process of approval, right from the date of scrutiny of such applications, documents, verification and inspection of premises/properties till the date of approval/sanction and even thereafter.

The present Petition is concerned with the admission to 1st year of Post SSC Diploma Courses in Engineering/ Technology for the academic year 2014-2015. The Respondents inspite of above settled position, have not granted the permission to the Petitioner, though sought for.

9 After hearing both the parties, by order dated 26 th June, 2014 as Respondent no.3 i.e. AICTE, has already granted approval and issued LOA (Letter of Approval) we, by ad-interim order and subject to further orders being passed in the Petition, directed the names of Colleges, approved courses and approved intake capacity to be published/displayed on the website of the Respondent (DTE). The same have been displayed accordingly.

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Respondent nos.1 and 2 by affidavit dated 2 nd July, 2014

resisted the prayers mainly on the foundation of the Perspective Plan for Technical Education in Maharashtra State (for short, "perspective plan") in this regard and also for the reason that the State Government will be financially burdened, if said permissions to open new Colleges and/or courses is granted/approved. We are dealing with the perspective plan of State of Maharashtra.

Respondents in their affidavit have not denied the fact of AICTE approval to the Petitioner, which approval is granted after considering the views of the State Government and its officers before

proceeding to pass such sanction/approval. There is nothing on record to show that the Respondent-State at any point of time communicated and/or objected, basically on the ground of 'perspective plan' on the proposal of the Petitioner. On the contrary as per the procedure, AICTE by taking note of the views from the State of Maharashtra granted the permission in question. The Petitioner deposited the requisite process fee with the Respondents. The Respondents-State/DTE committee even visited the Petitioner's Institute/College. The Committee has also not raised any objection to the proposals given by the Petitioner. The Petitioner, after recommendation/permission even deposited the security deposit along with affidavit with AICTE. AICTE by letter dated k 915 wp 5816.14 as.doc 3rd April, 2014 issued Letter of Approval (LOA) of new Institute/Courses/intake capacity as applied. Though applied by the Petitioner to complete the further formality, the Respondents-State/DTE have not taken further steps to grant the permission in spite of the urgency so referred because of scheduled dates.

12 The Respondent-State has by Circular dated 3 July 2014 granted approval to the "degree" courses of non-aided institutions in the State of Maharashtra. Therefore, all those Writ Petitions have been disposed of by common order dated 8 July 2014 ( Dr. D.Y. Patil Pratishthans College of Engineering Vs. Directorate of Technical Education & Ors. and other) by this Bench itself. Strikingly, the affidavit and the defence raised was similar in every aspect in this case also, including the defence revolving around "perspective plan", "financial burden" and "existing vacancies" of the State. The State, therefore, inspite of above defence, having granted the approval to the similar situated "degree" courses, the denial for same benefits and approval to the "diploma" courses, though AICTE has granted approval is unjustifiable. The similar defence so raised in this affidavit is also unsustainable. It is self contradictory.

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13 The Respondents main objection revolving around the

'perspective plan' undertaken, in our view, in the present facts and circumstances, is unsustainable. Specifically when there is no denial to the fact that AICTE is the final authority to deal with such technical education. Their supremacy is also recognized by Supreme Court and other High Courts. Therefore, having once granted the approval after following all the due procedure so prescribed including after taking views of State Government and other authorities, the role of State of Maharashtra, in our view is quite restricted. There is nothing pointed out that the State/DTE (Director of Technical Education) has power to override the decision taken by AICTE.

14 A Division Bench of this Court (Nagpur Bench) in Shri Shivaji Education Society, Amravati & Anr. vs. Maharashtra University of Health Sciences & Ors. 3 after taking note of various Supreme Court Judgments including Jaya Gokul Education Trust vs. Commissioner & Secretary to Government Higher Education Deptt., Thiruvananthapuram and Another, 4 held that "once the permission has been granted by Indian Medical Council to start the particular post graduate course, the further resolution by the State Government as well 32012(1) Mh.L.J.799 4AIR (2000) 5 SC 231 k 915 wp 5816.14 as.doc as the affiliation by the University would be a mere formality."

15 Here in the present case, AICTE is the final authority who has granted the permission to open the new colleges and to start the technical new colleges/courses with given intake capacity.

16 Based upon the same judgment, another Division Bench of this Court recently in (Sinhgad Technical Education Society and Anr.

vs. Maharashtra University of Health Sciences, & Ors.) 5 by judgment dated 10th January, 2014 observed as under:

"17 ..... We are inclined to observe that the decision given by the Division Bench in Shri Shivaji Education Society (Supra) itself is sufficient to grant the relief as prayed for. The Respondent - MUHS also in view of above judgment, cannot insist for the NOC from the State Government, while considering the Application for affiliation. The State Government themselves proceeded in respect of the Petitioners college on the basis of the permission granted by the IMC. Once mandatory permission from the IMC, as recorded above, has already been obtained, the formality part of permission and/or Resolution of the State Government for grant of affiliation, cannot be stated to be mandatory condition, as sought to be contended by the concerned Authorities while denying the relief/rejecting the proposals given by the Petitioners. The Respondents have themselves failed to take action within reasonable time, cannot be permitted to deny the entitlement to the Petitioners, once the mandatory permissions from the IMC have been obtained. Therefore, this Court in the present facts and circumstances, is inclined to direct final affiliation to the New Post Graduate Courses in medicines with approved 52014(3) Mh.L.J.470 k 915 wp 5816.14 as.doc intake to Petitioner No.2 - College for year 2013-2014 and further grant for extension and continuation of affiliation for the year 2014-2015 forthwith, as the same are interconnected and interlinked, however subject to requisite conditions, if any, in accordance with law.

18 For the above reasons, we are inclined to allow this Petition in terms of prayer clauses (b), (c) and (d). The concerned Respondents to comply with this order forthwith and definitely by 13 January 2014."

This Court therefore, on the same principle even directed the Respondent to issue appropriate Government Resolution as required.

17 A Division Bench of this Court in (D.Y. Patil Education Society and anr. vs. Directorate of Tech. Education and ors.) 6 passed an order dated 18th July, 2011 in following terms:

"ii) Respondent No.2 State of Maharashtra shall accordingly issue appropriate Government Resolution notifying the petitioner No.2 College as approved by AICTE in the list of such colleges for centralized admission process to be published today for the academic year 2011-2012 and respondent No.3 Director of Technical Education shall forthwith include the petitioner-college for Centralized Admission Process for

the first year Engineering Course for the academic year 2011-2012 and to display the name of Petitioner - College on its website along with other colleges. The information of said publication will be published by DTE by this evening by 5.00 p.m."

6Writ Petition No.5455 of 2011 k 915 wp 5816.14 as.doc 18 It is relevant to note that Apex Court in *Jaya Gokul Educational Trust vs. Commissioner & Secretary to Government Higher Education Deptt. Thiruvananthapuram* and another, 7 while dealing with the provisions AICTE Act specifically dealt with the similar objections so raised by the Kerala State referring and revolving around the 'perspective plan' and power of State Government of refusal to grant permission once the AICTE has already granted permission. The Apex Court has not accepted similar submission so raised by the Respondents in the present matter and on the contrary observed as under:

"27.....Therefore, the State could not have any "policy" outside the AICTE Act and indeed if it had a policy, it should have placed the same before the AICTE and that too before the latter granted permission. Once that procedure laid down in the AICTE Act and regulations had been followed under Regulation 8(4), and the Central Task Force had also given its favourable recommendations, there was no scope for any further objection or approval by the State. We may however add that if thereafter, any fresh facts came to light after an approval was granted by the AICTE or if the State felt that some conditions attached to the permission and required by the AICTE to be complied with, were not complied with, then the State Government could always write to the AICTE, to enable the latter to take appropriate action."

19 The Respondent-States' submission, even if accepted to some extent that they have a role to play in granting approval and 7AIR 2000 SC 1614 k 915 wp 5816.14 as.doc these additional colleges and/or seats would impose additional financial burden on State Exchequer, still this in no way could be read to mean that they have a superior power to refuse such approval as prayed for. The reason of refusal as recorded above, in no way disentitle the Petitioner and/or such Institution to establish the Educational Institutions/Colleges/Courses based upon the mandatory permission from the AICTE.

The Respondents, objections, even if any, in the present facts and circumstances, ought to have been raised immediately at the appropriate time where it was required for the State Government or its officers to forward their views, when such Application for new Colleges/new Course was moved by the Petitioner or such other person. The submission that only after taking inspection of the premises and when they found that the College and/or similar Institution is eligible to start such courses and then only they can utilize their power to refuse such permission/approval, is unacceptable, specially after permitting the Petitioner to reach to such a stage. The Respondents as noted above are fully aware of the stages which Petitioner has already crossed as per the procedure. They themselves have inspected the premises. Now at the eleventh hour, in spite of the permission/sanction granted by AICTE not to issue Government k 915 wp 5816.14 as.doc Resolution (GR) in our view is impermissible. This affects the rights of the Petitioner to establish the Colleges and/or to start their new courses having completed all legal and mandatory formalities, apart from huge investment as required.



21 It appears from record that the 'perspective plan' in question was available with the Respondents at the relevant time.

There is nothing on record to show that they have objected to AICTE granting approval on the ground of the 'perspective plan' at the earliest point of time or otherwise. The submission is also made that it was informed, but not taken note of, in our view, is also unacceptable. On the contrary, once the AICTE, in spite of the view so expressed by the State Government has taken this decision to grant approval, the State Government is under obligation to accept the same. There is nothing on record to show that the State Government at any point of time had challenged even the decision/approval given by the AICTE to the Petitioner's new colleges and/or new courses in question. The AICTE approval, therefore, in our view, binds even the Respondent-State so far as permission to start new colleges/new courses. This in no way means that the State Government has no control and/or supervisory power over such Institution in the State of Maharashtra. All parties, in our view, are bound by the decision/sanction so granted by the AICTE k 915 wp 5816.14 as.doc unless challenged and/or set aside. The Respondent-State, in our view, just cannot withhold their permission to the Petitioner to start the institution/course/increase intake capacity as approved by AICTE.

They have no choice but to issue appropriate Government Resolution to grant permission to the institutions accordingly forthwith, in view of the time constraints.

22 It is relevant to note that this is not the case of any kind of deficiencies raised and/or pointed out by the Respondent-State. On the contrary, AICTE, the supreme authority, has granted sanction on the basis of "no deficiency" endorsement to the Petitioner's institution/ courses/intake capacities. The approach of Respondent-State not to issue such approval/Government Resolution in favour of the Petitioner is therefore, nothing but a deviation from the final sanction/approval granted by the AICTE. The Respondents-State, therefore, in our view, is not acting in conformity with their own obligations to accept the final decision/sanction given by AICTE. Initially, at the relevant time Respondent-State/DTE officer attended and actively participated in the process of scrutiny and inspection for granting approval/sanction by the AICTE. Having participated at all the stages, the Respondent-

State/DTE cannot withdraw themselves from their obligations to grant approval on such issues at such stage.

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23 The policy, behind the perspective plan, we are not deprecating. This is in no way to be read to mean that we are

interfering with the policy decision in any way. In the present case, considering the factual situation so recorded above, we are inclined to grant relief for this academic year 2014-2015. The balance of convenience, equity lies in favour of the Petitioner, students and institutions. The Respondents-State are free to take steps as per the policy at the appropriate stage and within a reasonable time. Timely action is must by all the concerned. The Petitioner or such institutions are also under obligation to provide quality education at all levels, by providing the requisite infrastructure and the facilities.

24 The Respondent-State's financial burden, cannot be the reason to deny the approval as they are also under constitutional obligation to provide and give all benefits and privileges to the Scheduled Castes and Scheduled Tribes, Other Backward Classes and Special Backward Classes including the students of Financial Backward Background and as per their own policy. The details of such financial burden has not been placed on record. This also cannot be the reason, at this stage, to withhold the approval. The perspective plan itself recommends that "No student should be deprived technical education due to lack of financial aid".

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25 So far as alleged vacancies in seats in the State of

Maharashtra is concerned, in our view, everybody needs to have timely introspection at every level. The right and opportunity of higher education cannot be curtailed in such fashion. The need of educational institutions at the nearest area and district, just cannot be overlooked.

The process of de-recognition and de-affiliation of defaulting institutions every year should also be the reason to consider/establish the new institutions and/or courses. The perspective plan, therefore, may be kept in mind subject to other Constitutional and legal obligations. The private and un-aided institutions and new courses and intakes with the latest infrastructure and the facilities are in demand. The students/parents will have option to select and/or chose the colleges/courses as per the requirements. We have to consider all these aspects while deciding the defence so raised. In case of vacancies, even if any, such institutions will suffer more and certainly there is no question of financial burden on the State, in such situation, though vaguely mentioned in the defence. To facilitate and permit more colleges and courses for higher education, is also in the interest of State to aid and support their obligations as provided in the Constitution of India.

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26 For the above stated reasons, we are of the view that

everybody concerned should be permitted to participate in admission process at the earliest. The interim order so passed also merge into the final order to enable the institutions and students to participate in the admission process as scheduled. The timely action, therefore, is must for all.

27 The statement is made by the Counsel appearing for the parties that in pursuance of the order of the Supreme Court in Jayamata Engineering College (Supra) the scheduled dates now stand extended, which dates were initially fixed by Parshavanath Charitable Trust (Supra).

28 In the aforesaid reasons, we pass the following order:-

ORDER

a) The Petition is allowed in terms of prayer clauses a(i) and (ii), which read thus:-

"a) (i) the Respondent No.2 in it's Higher & Technical Education Department to forthwith issue appropriate Government Resolution/ Notification recording the approval granted by AICTE to the Petitioner Institution for A.Y. 2014-15;

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(ii) the Respondent No.1 to forthwith include the Petitioner in Centralised Admission Procedure (CAP) for First Year Engineering Courses (Diploma) as approved by AICTE for A.Y. 2014-2015 and to issue Institute Code and further display the name of petitioner on its web portal along with Institute Information, course wise sanctioned intake & choice codes."

b) Rule made absolute accordingly. No costs.

c) It is made clear that the Petitioner Institution shall comply with other obligations/formalities, if any.

(A.A. SAYED, J.)

(ANOOOP V. MOHTA, J.)

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