

Bombay High Court

St. Xaviers Institute Of ... vs State Of Mharashtra And 4 Ors on 17 November, 2017

Bench: S.C. Dharmadhikari

1 of 15

WP.915.2006

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.915 OF 2006

1. St. Xavier's Institution of Education Society,
Being society registered under the Societies
Registrationn Act, 1960 and situated at
40-A, New Marine Lines,
Churchgate Branch, Mumbai 400 020.

2. St. Xavier's Institution of Education,
An Institution established by Petitioner No.1
and approved by NCTE, recognised by
Government of Maharashtra and
affiliated to the University of Mumbai,
situated at 40-A, New Marine Lines,
Churchgate Branch, Mumbai 400 020.

Petitioners

Versus

1. State of Maharashtra,
Department of Higher & Technical
Education Through the Govt.
Pleader's Office, PWD Building,
Fort, Mumbai 400 023.

2. University of Mumbai,
Fort, Mumbai 400 032.

3 University of Mumbai Students'
Grievance Redressal committee
University of Mumbai,
Fort, Mumbai 400 032.

4. Mr.Sidharth Chorghade,
C/o. Xt. Xavier's Institution of Education
40-A, New Marine Lines, Opp. State Bank of India,
Churchgate Branch, Mumbai 400 020.

5. Mr. Sheshrao Chavhan,
C/o. St.Xavier's Institution of Education,

::: Uploaded on - 17/11/2017

::: Downloaded on - 18/11/2017 02:02:56 :::

2 of 15

WP.915.2006

40-A, New Marine Lines,
Opp. State Bank of India, Churchgate Branch,
Mumbai 400 020.

Respondents

Mr.S.C.Naidu i/by M/s.C.R.Naidu and Co. for petitioners.
None present for Respondents.

CORAM : S.C.DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.

Date of Reserving the Judgment : 21st September, 2017 Date of Pronouncing the Judgment : 17th
November, 2017 JUDGMENT : (Per - Prakash D. Naik, J.) :-

1. The petitioners have invoked the writ jurisdiction of this Court under Article 226 of Constitution of India. The petitioners have challenged the communication dated 14th March 2006 issued by respondent no.2 pursuant to the resolution/decision of Students Grievance Redressal Committee dated 21st February 2006. The petitioners also seek declaration that the Respondent no.3 has no powers to pass resolution dated 21st February 2006.

2. Petitioner no.1 is the society with the main object of imparting teachers training. The petitioner no.2 is an educational institution established by the petitioner no.1 for the purpose of conducting B.Ed. and Ph.D. degree and other extension courses in education. The petitioner is the non-government aided, teachers training college for the course of B.Ed. affiliated to the University of Mumbai and recognized by the National Council for Teacher Education.

3 of 15 WP.915.2006

3. The Students Grievances Redressal Committee is constituted in accordance with Section 80 of the Maharashtra Universities Act, 1994 to deal with the grievances of the students of the University of Mumbai studying in its department/centres, affiliated colleges, institutions and recognized institutions etc.

4. Petitioner no.2 college trains students for the degree of Bachelor of Education (B.Ed.) and the Doctorate in Education (Ph.D.). The B.Ed. degree course is a full time one year course. It combines theory course with practicals and includes regular lectures, practice teaching, lesson observation, community work, internship programme, preparation of instruction material and teaching aids and project work. Computer literacy, physical fitness, emotional health and the use of educational technology are also included in the course. According to the petitioners, in order to take up the B.Ed course, the candidate is required to have passed a Bachelor's Degree examination of a University in any faculty or a corresponding degree examination of any other University recognized as equivalent

thereto and in addition must have subsequent to his passing the Bachelor Degree examination kept two consecutive terms for the full time B.Ed course separated over a period of two consecutive years in a college of education and also completed Practicals extending over two terms to the satisfaction of the Principal of the institution in which the candidate is studying consisting of attendance at demonstration lessons, teaching practice of not less than 20 lessons distributed over different standards from Vth to XIIth of recognized secondary and higher secondary schools/collages selected by the Principal as the practicing school/college and the other requirements.

4 of 15 WP.915.2006

5. The petitioners further contend that the respondent no.2 University by ordinances and regulations relating to the Degree of the Bachelor of Education (B.Ed.) (revised course) has prescribed as under :

"i. The Degree B.Ed. Consists of "Part-A" - Theory - External Assessment and "Part-B" Practicum Internal Assessment. A student is entitled to take examinations in Part-A and Part-B after attending two consecutive terms enrolled for the course. Petitioner submits that a candidate who has kept terms for the B.Ed. degree examination but who has either not appeared for Part-A or failed in Part-A will be permitted, at his option, to carry forward the grade obtained in Part-B to three subsequent examinations. Candidates exercising the option shall not be eligible for a 'First or Second class'.

ii. Petitioner submits that a candidate who has kept terms for the B.Ed. Degree examination but who has either not appeared for Part-A or failed in Part-A will be eligible for class provided he completes additional practical work of Part-B.

iii. A candidate who has passed in Part-A but fails in Part-B will be permitted at his option to carry forward the marks obtained in Part-A to three subsequent examinations. The candidate be required to revise his grade in Part-B as specified in Rule 4255. Candidate exercising this option shall not be eligible for a first or second class.

iv. A candidate who has passed in Part-A but fails in Part-B will be eligible for class provided he puts in regular attendance for two additional terms at the college from which he appeared for the University Examination and completes the entire work of Part-B and reappears in Part-A examination conducted by the University.

5 of 15

WP.915.2006

v. A candidate who fails in Part-A and fails in Part-B,

will be required to put in regular attendance for two additional consecutive terms at the college from which he appeared for the university examination and completes the

entire work of Part-B and reappears in Part-A examination conducted by the university will be eligible for the class."

6. As stated by the petitioners, 500 marks are allotted for Part-A (theory) (external assessment) examination held by the University. 500 marks are allotted for Part-B (Practicum) (internal assessment) by the college. Out of the 100 students who appeared for the examination, 94 students were successful. 4 students failed in Part-B and 2 students failed in both, Part-A and Part-B, in the subject academic year. The students who failed in only Part-A (theory) were not required to keep terms and would have to reappear directly for University examination in the next year. However, students who failed in Part-B (practicum), are required to keep an additional term, attend college and undergo practical training specially conducted by the college, as prescribed by the University. It is contended that the 6 students who have failed in Part-B and were required to keep an additional term and attend college regularly. According to the petitioners, for additional term at the college, the said students were required to pay fees (the examination fee of Rs.500/-) to the University and Rs.6,088/- as term fee for Part-B for the additional term. Accordingly, a notice dated 15th November 2005 was displayed notifying unsuccessful candidates of the previous batch of B.Ed. degree course to fill in the examination forms and make payment of fee for additional term which they were required to attend (Part-B, Practicum). In response to the aforesaid notice, the said 6 students filled in University examination forms to reappear for the B.Ed. degree (Part-B). All the six students paid Rs.500/- each being the 6 of 15 WP.915.2006 examination fees. However, on 29th November 2005, two of the six students requested for time to pay term fees of Rs.6,088/- within ten days. The request was made by respondent nos.4 and 5 by issuing letters which are annexed to the petition.

7. The petitioners received a letter dated 5th December 2005 addressed by the Joint Director of Higher Education forwarding a complaint received by the Minister of Higher Education from the said six students, stating that they were not allowed to fill the examination forms, that they were deliberately failed by the college, that the college was demanding Rs.8,000/- as fee and that they were all below poverty line and could not bear the said fees. The purported complaint forwarded to the minister was unsigned. The petitioners contended that upon receipt of the aforesaid letter, appropriate inquiries were made by them with the concerned students. The four students out of the six students had individually informed the petitioner college vide their letters that they were not involved in the matter and that they had not made any complaint to the Minister of Higher Education. The said letters are also annexed to the petition. The petitioners thereafter addressed a letter dated 29th December 2005 to the Joint Director, Higher Education, setting out in detail the facts and circumstances. Along with the letter the petitioners enclosed ordinances, regulations of the University and the other requisite documents. On 6th January 2006 the petitioners received a letter dated 5th January 2006 addressed by the Registrar, respondent no.2 University. The said letter forwarded an application made by the respondent no.4 on 25th November 2005 to respondent no.3 i.e. Grievances Redressal Committee. The said application was incomplete inasmuch as the nature of grievance was not mentioned 7 of 15 WP.915.2006 in the said form. The application was signed by only two of the six students although the names of all the six students were mentioned. The petitioners were called upon to submit their reply on or before 10th January 2006 to the said letter. The petitioners replied the aforesaid letter vide reply dated 10th January 2006 which was addressed

to the Registrar of respondent no.2 University. The petitioners once again pointed out the events that had occurred till that date and also enclosed the relevant documents. According to the petitioners, the respondent nos.4 and 5 who had signed the complaint, had approached the management of the petitioners vide their letter date 10th January 2006 with a request to give them some more time to make payment of fees, as they did not have money to make payment of the said fees. The petitioners considered the said request sympathetically and they were permitted to pay fees by 10th February 2006. According to the petitioners, in the meantime, the respondent nos.4 and 5 were permitted to attend college and conduct the practicals as well as to appear for the internal test along with other students. The said students did not make payment of the term fees although extension was granted to them on two occasions. As the said students had not made payment of term fees, they were not allowed to continue the practicals after 10th February 2006. On 10th March 2006, the respondent no.5 once again approached the management and requested that he may be given concession in fees vide his application dated 10th March 2006. The said request was once again favourably considered and vide letter dated 10th March 2006 he was allowed to pay 50% of the term fee by 13th March 2006. However, the respondent no.5 did not respond nor paid the concessional fees. The respondent no.4 did not report to the college since 10th February 2006.

8 of 15 WP.915.2006

8. The petitioners further contended that they received a letter dated 14th March 2006 from the Registrar, respondent no.2 University, in which the resolution passed by respondent no.3 committee was quoted as under :

"The students were present before the Committee. The letter No.SXIE/U-3/2005-2006 dated 19th January, 2006 received by the Principal of the College was perused by the committee. The committee has gone through the references given by the College (1) University Ordinance regarding additional term (2) Letter No.Jt.ED/HE Mumbai/05/4019 dated 5/12/2005, Ordinance does not mention about charging of extra term fees. In light of situation it was resolved that College should not charge extra fees."

The petitioners are aggrieved by the aforesaid letter dated 14th March 2006 and the resolution passed by the Students Grievances Redressal Committee which was quoted in the aforesaid letter.

9. Mr.Naidu, learned advocate for the petitioners submitted that the impugned order was passed without giving hearing to the petitioner institute. The direction is contrary to the principles of natural justice, fair play and equity. It is further submitted that the order is contrary to the ordinances, statutes and the governance of recognized colleges, which mandates that students enrolled have to pay the prescribed fees for enrolling themselves, attending college and seeking education in the college. It is submitted that the impugned order is in the nature of penalty in as much as it requires the college to conduct additional term without charging fees and at the same time, the lecturers are required to be compensated for the extra work. It is further submitted that the Students Grievances Redressal Committee has no authority to prescribe fees or rescind the 9 of 15 WP.915.2006 fees prescribed by the college in line with the directions of the State Government

GR No.ANGC2001/B.Ed./(442/01)MISHI-3, dated 24th May 2002. The impugned order is passed bypassing rules and regulations framed for entertaining an application by student. It is submitted that Rules have been framed setting out the mode and manner in which grievances raised by students are required to be routed and dealt with. The committee has entertained the application though the same is in breach of rules and regulations. The impugned resolution is, therefore, contrary to law. It is further submitted that the authority has to act in terms of rules and regulations and in no other manner. The resolution is contrary to the well established principles of law. It is submitted that the students who fail in Part-B (Practicum), were required to keep an additional term, attend college and undergo practical training specially conducted by the college as prescribed by the respondent University. All the students who had failed in Part-B, were, therefore, required to keep an additional term and attend college regularly. In view of the additional term at the college, the said students were required to pay the examination fees as well as the term fee for the additional term. The respondent nos.4 and 5 did not pay the said fees. It is submitted that the impugned order does not assign any reason for passing the impugned direction. The resolution passed by the Students Grievances Redressal Committee also does not specify as to in accordance with what rules and regulations the said resolution was passed and the impugned direction was given by the said respondent no.2.

10. On behalf of respondent no.2, the Deputy Registrar of the University has filed a reply which is on record. In the said reply, it is 10 of 15 WP.915.2006 stated that upon receipt of grievances application dated 25th November 2005 from respondent no.4 and others to the effect that excess fees is being charged by the petitioner college for the B.Ed. degree course for the academic year 2004-05, the said grievance was considered by the Students Grievances Redressal Committee on 21st February 2006. Accordingly the said committee went through the petitioner college's letter which had recorded its detailed version, and thereafter the resolution was passed by the said committee. It is further stated that the committee went through the ordinance pertaining to the additional term as well as the letter dated 5th December 2005 received from the office of Joint Director, Higher Education, Mumbai. The committee after taking into consideration all the relevant aspects, resolved that the petitioner college should not charge extra fee. Thereafter the report of the said committee was accepted by the competent authority, the said resolution was then communicated vide letter dated 14th March 2006 to the petitioner college. A reference was also made to the Ordinance 2802 which refers to the admission of students against the sanctioned seats in various classes in the colleges and they shall be made on the basis of merit and that no donation or capitation fee or deposit of any kind shall be charged by the management of any college or a college for admission of students against the seats. The management of the college or colleges shall accept fee and other charges as prescribed by the University for admission of students against the seats. It is further stated that the affiliated colleges including minority educational institutions cannot be permitted to act contrary to the statutory provisions as well as ordinances and statutes governing the field.

11 of 15 WP.915.2006

11. We have perused the contents of the petition as well as the documents placed on record and the affidavit in reply filed on behalf of the respondent no.2 University. We have noted that a candidate

who has passed in Part-A but fails in Part-B will be eligible for class provided he puts in regular attendance for two additional terms at the college from which he appeared for the University examination and completes the entire work of Part-B and reappears in Part-A examination conducted by the University. A candidate who fails in Part-A as well as in Part-B will be required to put in regular attendance for two additional consecutive terms at the college from which he appeared for the University examination and completes the entire work of Part-B and reappears in Part-A examination conducted by University will be eligible for the class. The students who failed in Part-A only were not required to keep terms and would have to reappear directly for the University examination next year. However, the students who failed in Part-B (Practicum) are required to keep an additional term, attend college and undergo practical training specially conducted by the college as prescribed by the University. The six students who are the subject matter of this petition, had failed in part-B and were required to keep an additional term and attend the college regularly. In the aforesaid circumstances, the students were required to pay the fees for examination as well as the term fees for Part-B for the additional term. It is pertinent to note that said six students had failed out of the 100 who appeared for the examination. Four students failed in Part-B and two students failed in both, Part-A as well as Part-B. The respondent nos.4 and 5 were the students who had failed in Part-B examination. Thus, the said respondents were required to keep an additional term, attend college and undergo practical training specially conducted by the college.

12 of 15 WP.915.2006 Out of the six students who were declared fail, four students had paid the term fees as well as the examination fees. However, the respondent nos.4 and 5 had paid the examination fees of Rs.500/- but did not pay the term fees. The alleged complaint of the student forwarded along with letter dated 5th December 2005 addressed by the Joint Director of Higher Education was not signed by any of the students, however, the names of the said six students were mentioned in the said complaint. Upon enquiry individually, the four students had tendered letters which are annexed to the petition stating that they had not forwarded any such complaint.

12. It is pertinent to note that Part-B consists of practicum and internal assessment. As per Rule 4255 of University Rules, a student is required to put in regular attendance for a period of at least one additional term at the college from which he appeared for the University examination, give twelve additional lessons and six simulated lessons in two special methods under the supervision of college authorities, appear for one terminal examination and write at least five essays. For conducting the practical training, for the students who have failed, the college has to engage additional lecturers or call upon the existing lecturers to take additional work load and classes. The lecturers are required to be compensated for the additional work load. Besides the said payments, the management is also required to bear additional administrative costs. The petitioner is a non-Government aided college. If any student has any grievance in respect of working, fees, etc. the said student is required to route his Application to the Respondent No.3 Grievance committee through the Principal/Head of Department as provided in Rule 21(6) of the University of Mumbai Students' Grievance 13 of 15 WP.915.2006 Redressal committee (Transaction of Business) Rules, 1998 (hereinafter referred to as the said Rules). Rule 21(7) of the said Rules provides that in case if a student for any reason feels it is not possible to submit his application through the concerned Principal or Director or Head of Department he may forward his application directly to the Registrar. However, he shall specify the reasons for doing so in the application while sending the

form directly to the Registrar. Petitioners state that in the present case the aggrieved students have directly made an application to the Respondent No.3. The concerned students have however, not mentioned the reasons for directly submitting their Application to the Respondent No.3 and by passing the Principal/Head of Department as provided in the University of Mumbai Students' Grievance Redressal committee (Transaction of Business) Rules, 1998. The Application made to the Respondent No.3 Committee is incomplete. The nature of grievance, which the said student has is not mentioned. As per Rule 23(4) of the said Rules the Respondent No.3 Committee has to check and ascertain whether all particulars are complied with while submitting the Application. The Respondent No.3 has overlooked the aforesaid Provisions and considered the Application of the concerned Students. Rule 25(8) of the Rules provides that the Respondent No.3 Committee shall hear in person the Principals, Directors of Head of Department or any of the Office Bearers duly authorized by the Management. Petitioner submits that from the letter dated 14 th March, 2006 addressed by the Respondent No.2 University to the Petitioner College it is clearly evident that a personal hearing was given to the students, however, the college was not even informed of such meeting. The Petitioners were not given an opportunity of being personally heard in the matter. As per Rule 25(11) of the said Rules 14 of 15 WP.915.2006 the Respondent No.3 after hearing both parties was required to make a report to the Vice Chancellor, Respondent No.2 University. It appears that no such report was made to the Vice Chancellor as can be seen from the letter dated 14th March, 2006, which is annexed at Exhibit-I to the petition.

13. We have also perused the impugned communication dated 14th March 2006. In the said communication, it is stated that representation dated 25th November 2005 was received from the students in the matter of excess fees charged by the college for the B.Ed. degree course during the academic year 2004-05. The said communication further states that the representation was placed before the Students Grievances Redressal Committee at its meeting held on 21st February 2006 wherein it was resolved that the students were present before the committee and the letter received from the Principal of the college was perused by the committee. The committee had gone through the references given by the college and that the ordinance referred to by the college does not mention about charging of extra term fee and hence it was resolved that the college should not charge any extra fee. The Registrar of respondent no.2, therefore, addressed the said communication to the petitioners stating that necessary action as per the said resolution of the Students Grievances Redressal Committee be taken by the petitioners. Apparently the petitioners were not heard before passing the said resolution. The resolution does not specify under what provision the same was passed by the committee stating that the petitioners are not required to charge extra fee to the students. No cogent reasons are reflected in the said resolution for arriving at the said decision. It also appears that the respondent no.2 has 15 of 15 WP.915.2006 mechanically accepted the resolution passed by the respondent no.3 and forwarded the same to the petitioners. The rules relevant to the point that the students who had failed in Part-B are required to undergo the practical training and attend lectures is not considered by the respondent no.3 while passing the said resolution. In view of the observations made hereinabove, we find that the resolution passed by the respondent no.3 is contrary to the rules and regulations and it is also violative of principles of natural justice. In the circumstances, the communication forwarded by the respondent no.2 University dated 14th March 2006 as well as the said resolution is required to be set aside. It appears that the respondent no.2 has not applied its mind while forwarding the said

communication.

14. For the reasons stated hereinabove, we pass the following order :

ORDER A) Writ Petition is allowed;

B) The impugned communication dated 14th March 2006 issued by the Registrar of respondent no.2 as well as the resolution dated 21st February 2006 passed by respondent no.3 are quashed and set aside;

C) Petition stands disposed off. No order as to costs.

(PRAKASH D. NAIK, J.)

(S.C.DHARMADHIKARI, J.)

MST