

(1998) 07 BOM CK 0039

In the Bombay High Court

Case No : Writ Petition No. 2687 of 1997

Bharati Vidyapeeth

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 30-07-1998

Acts Referred:

Advocates Act, 1961 — Section 4
Constitution of India, 1950 — Article 14, 19(1), 21, 226, 246
Maharashtra Universities Act, 1994 — Section 115, 35, 82, 83
Shivaji University Act, 1974 — Section 43

Citation : (1998) 4 ALLMR 31 : (1998) 4 BomCR 381 : (1998) 3 MhLj 453

Hon'ble Judges : S. Radhakrishnan, J; A.V. Savant, J

Bench : Division Bench

Advocate : A.V. Anturkar, for the Appellant; Smt. S.S. Gokhale, A.G.P., R.G. Ketkar, for the Respondent

Judgement

A.V. Savant, J.—Heard all the learned Counsel; Shri Anturkar for the petitioner, Smt. Gokhale for respondent No. 1 and Shri Ketkar for respondent No. 2. None appears for respondent No. 3, though served.

2. This is a petition by Bharati Vidyapeeth, which is a public charitable trust registered in accordance with the provisions of the Bombay Public Trusts Act, 1950. It is also a Society registered under the Societies Registration Act, 1860. The petition relates to the permission to start a morning Law College, at Sangli, which is a District Headquarter in Maharashtra. The petition is for a writ of mandamus directing respondents No. 1 and 2 State of Maharashtra and Shivaji University respectively to grant permission and affiliation to the said Law College in accordance with the provisions of the Maharashtra Universities Act, 1994. The third respondent Bar Council of India, New Delhi, is a statutory body constituted u/s 4 of the Advocates Act, 1961. One of the functions of the Bar Council of India (for short, B.C.I.) is to promote legal education and to lay down the standards for such education in consultation with the Universities in India imparting such education and the State Bar Councils. u/s 7(1) of the Advocates Act, it is also the

function of the B.C.I. to recognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf.

3. What the petitioner contends is that despite the Shivaji University (for short, "the University") having initially recommended its proposal for starting the Law College, at Sangli for the academic years 1994-95 and 1995-96 and despite the B.C.I. having granted permission to the petitioner to start the Law College, at Sangli, for teaching three years" course with morning classes from the academic year 1996-97, no decision was taken either by respondent No. 1 State or by respondent No. 2 University in accordance with the provisions of the Maharashtra Universities Act, 1994. The relevant facts are as under :

4. On 28th August 1993 the petitioner sent to the Registrar of the University its proposal for opening a Law College, at Sangli, from June, 1994. The petitioner furnished the requisite information as per the provisions of section 43 of the Shivaji University Act, 1974 (which Act has since been repealed by section 115 of the Maharashtra Universities Act, 1994, which came into force on the 22nd July 1994). On 1st January 1994, the petitioner also wrote to the Minister for Higher and Technical Education, Government of Maharashtra praying for permission to open a Law College, at Sangli.

5. On 24th February 1994 the Registrar of the University wrote to the Secretary, Higher Education, Government of Maharashtra with reference to the petitioner's application for permission to open a Law College, at Sangli, commencing with the academic year June, 1994. The letter dated 24th February 1994 refers to the petitioner's application and the guidelines laid down by the State Government in its Resolution dated 27th November 1986. Under the provisions of section 43 of the Shivaji University Act, 1974 the University had appointed a Committee to scrutinise the application made by the petitioner pursuant to the directions of the Executive Council, which was functioning under the 1974 Act. The Committee scrutinised the said application and the details about the infrastructure for the proposed Law College and in the light of that, recommended the proposal to the State Government u/s 43(4) of the 1974 Act. Sub-section (4) of section 43 of the 1974 Act read as under :---

"Section 43.

(1)

(2)

(3)

(4) The Executive Council shall scrutinise and determine the order of priority of the applications received and forward the results to the State Government for approval".

It is thereafter that the State Government has to consider the question of grant of permission in accordance with the provisions of section 43 of the 1974 Act. The fact remains that on 24th February 1994, the Registrar of the University, on being satisfied about the recommendations of the Committee appointed by the Executive Council, made a recommendation in favour of the petitioner with a request that the Government permission should be received on or before 31st May 1994 so that necessary action can be taken in time. Alongwith the said recommendation dated 24th February 1994, the details of the proposal for affiliation from June 1994 were annexed. If we peruse the said details, it categorically states that there was compliance with the requisite formalities and though there was one Day Law College at Sangli, there was no Evening Law College. It is further stated that as per the Government Resolution (G.R.) dated 24th September 1973, the necessary infrastructure was available and subject to fulfilling the conditions imposed by the said G.R. and by the B.C.I., a recommendation was made for granting permission to the proposal for opening an Evening Law College, at Sangli.

6. On 9th March 1994, the Registrar informed the petitioner that with reference to the petitioner's proposal for opening an Evening Law College, at Sangli from June 1994, the Executive Council had recommended to the State Government by its communication dated 24th February 1994, referred to above, but the petitioner was informed that unless prior permission was obtained from the State Government and the B.C.I. actual teaching should not commence and if the petitioner did that, it would be solely the petitioner's responsibility. Since the petitioner was asked to approach the B.C.I. by the above mentioned letter dated 9th March 1994, received by the petitioner on 14th March 1994, the petitioner made an application to the B.C.I. on 25th April 1994. The petitioner stated that the University had recommended its application to the State Government, but it was required to obtain permission from the B.C.I. The petitioner, therefore, requested the B.C.I. to appoint a Committee to examine its case and grant permission at the earliest so that the Law Colleges at Sangli and Karad could start from the academic year 1994-95.

7. It may be stated that though the petitioner's initial request was for permission to open two Law Colleges, one at Sangli and the other at Karad in District Satara, the present petition is only confined to the Law College at Sangli. The petitioner has not been granted permission for- the Karad Law College and there is no challenge to the said order. On the 18th May 1994 the petitioner wrote to the B.C.I. informing its achievements in the educational field having opened several educational institutions from pre-primary to post-graduate stages in all disciplines and professional and non-professional faculties. It is stated therein that, by that date, the petitioner was conducting 9 Post-Graduate Research Institutions, 12 Professional Colleges, 3 Non-Professional Colleges, 5 Polytechnics, 11 Junior Colleges, 24 High Schools, 8 Primary Schools etc. About two lacs students were stated to be taking education in Bharati Vidyapeeth from pre-primary to the post-graduate level. It had employed 6000 employees by then

and the main objective of the Bharati Vidyapeeth was to bring about intellectual awakening and transformation in educational, economic, social and cultural fields in India. It is further stated in the said letter dated 18th May 1994 that the petitioner was then conducting two Law Colleges; one at Pune and the other at Kolhapur and had applied for permission to open two more colleges; one at Sangli and the other at Karad, District Satara. The letter/application dated 18th May 1994 addressed to the B.C.I. was, however, confined to the permission to open the Law College at Sangli, for which the petitioner had stated that it had complied with the requisite formalities.

8. On 15th June 1994 the B.C.I. informed the petitioner that it had nominated two members who constituted the Committee for inspecting the proposed Sangli Law College and submit the report to the B.C.I., the two members being (i) Shri R. Muthukrishnan, from Madras; and (ii) Shri D.V. Patil from Maharashtra. However, nothing seems to have happened thereafter in the academic year 1994-95, and obviously in the absence of the permission by the B.C.I. the college could not commence for the academic year 1994-95.

9. On 26th October 1994 the petitioner again wrote to the University praying for permission to open the Law College, at Sangli, from the academic year 1995-96. By this time, the Maharashtra Universities Act, 1994 had come into force on 22nd July 1994 (for short, the 1994 Act) and under sub-section (3) of section 82 it is obligatory on the management seeking permission to open a new college or institution of higher (earning, to apply in the prescribed form to the Registrar of the University before the last day of October of the year preceding the year for which the permission is sought. Accordingly, the petitioner made an application on the 26th October 1994 for permission to start the Law College from the academic year 1995-96 commencing with June. 1995. As was done for the academic year 1994-95, the university appointed a Committee pursuant to the directions of the Management Council, as per the scheme of sub-section (4) of section 82 of the 1994 Act. Section 82 reads as under:-

"82.(1) The University shall prepare a perspective plan for educational development for the location of institutions of higher learning in a manner ensuring equitable distribution of facilities for Higher Education having due regard, in particular, to the needs of unserved and under-developed areas within the jurisdiction of the university. Such plan shall be prepared by the Academic Council and shall be placed before the Senate through the Management Council and shall be updated every 5 years.

(2) No application for opening a new College or institution of higher learning, which is not in conformity with such plan, shall be considered by the university.

(3) The Managements seeking permission to open a new college or institution of higher learning shall apply in the prescribed form to the Registrar of the university before the last day of October of the year preceding the year form which the permission is sought.

(4) All such applications received within the aforesaid prescribed time-limit, shall be scrutinised by the Board of College and University Development and be forwarded to the State Government with the approval of the Management Council on or before the last day of December of the year, with such recommendation (duly supported by relevant reasons) as are deemed appropriate by the Management Council.

(5) Out of the applications recommended by the university, the State Government may grant permission to such institutions as it may consider right and proper in its absolute discretion, taking into account the State Government's budgetary resources, the suitability of the managements seeking permission to open new institutions and the State level priorities with regard to location of institutions of higher learning;

Provided, however, that in exceptional cases and for the reasons to be recorded in writing any application not recommended by the university may be approved by the State Government for starting a new college or institution of higher learning.

(6) No application shall be entertained directly by the State Government for the grant of permission for opening new college or institutions of higher learning."

10. It will be evident from the Scheme of section 82 that sub-section (4) contemplates scrutiny of the application received from the Management. Such scrutiny is to be made by the Board of College and University Development, which is a high power body consisting of top academicians. The composition of the Board of College and University Development (for short, "the Board") is as per the provisions of section 35 of the 1994 Act. It consists of (a) Vice-Chancellor, (b) Pro-Vice Chancellor, (c) one Dean of faculty, (d) one Head or Director from amongst the Heads and Directors of University institutions or departments, (e) one teacher, imparting post-graduate instruction or guiding research, (f) one teacher imparting under-graduate instruction, (g) one principal of an affiliated college, (h) one principal of an affiliated professional college, (i) two experts, co-opted by the Board from amongst the Heads of National and State level research institutions, (j) two persons to represent industry, Banks, commerce or professional bodies, and (k) the Director of the Board of College and University Development. After the Board scrutinizes the application for permission to open a college, it is forwarded to the State Government with the approval of the Management Council. u/s 27 of the 1994 Act, the Management Council is the principal executive authority to formulate Statutes and forward the same to the Senate for approval and make Ordinances to administer the affairs of the university. It consists of (a) the Vice-Chancellor, as its Chairman, (b) the Pro-Vice-Chancellor, if any, (c) one Dean, nominated by the Senate, (d) one person nominated by the Chancellor, (e) the Secretary, Higher Education Department, (f) the Director of Technical Education, (g) the Director of Higher Education, (h) one Head or Director nominated by the Senate, (i) the Director, Board of College and University Development, (j) one principal, elected by the

Senate, (k) one teacher from the university department, (I) two teachers from amongst the teachers of the affiliated colleges with sixteen years teaching experience, (m) one person who is not a Dean, elected by the Senate, and (n) three persons elected by the Academic Council. We have briefly indicated the composition of both, the Board of College and University Development u/s 35 of the Management Council and u/s 27 without reproducing the exhaustive sections of the 1994 Act.

11. As indicated earlier, sub-section (4) of section 82 of the 1994 Act contemplates the application of the management being first scrutinised by the Board and then approved by the Management Council and thereafter to be forwarded to the State Government on or before the last day of December of the year with such recommendations as are deemed appropriate by the Management Council. As far as the academic year 1994-95 was concerned, this formality was completed when the Registrar of the University forwarded the proposal to the State Government on 24th February 1994. As far as academic year 1994-96 was concerned, after completing the above formalities in accordance with the provisions of sub-section (4) of section 82 viz. scrutiny by the Board and the approval of the Management Council, the Registrar forwarded the proposal on 24th January 1995 to the State Government with a favourable recommendation. It was specifically requested in the letter dated 24th January 1995 that the Government's order in respect of permission should be received before 31st May 1995 so that further action could be taken in time. Along with this letter dated 24-1-1995, a chart was sent in respect of the colleges recommended for grant of permission under sub-section (5) of section 82 of 1994 Act. As far as the petitioner's Evening College, at Sangli, is concerned, it is specifically stated that though the college was not included in the Master Plan (referred to as "Perspective Plan" in section 82(1)), there was only one day Law College and hence, in accordance with the Government Resolution dated 24th September 1993 recommendation was made for grant of permission for opening an evening Law College, subject to the condition that the necessary infrastructure was made available and further, that the conditions imposed by B.C.I., should be complied with.

12. At this stage, it is necessary to refer to the G.R. dated 24th September 1993. It refers to the need for laying down guidelines in the matter of grant of permission for opening new colleges. When recommendations were to be made by the Universities, a direction was given to the Universities that when they send the proposal they should give the details of the management, the availability of infrastructure such as building, library, hotel, playground, availability of educational facilities in the nearby talukas, in the event of more than two Colleges being recommended, the mutual priorities and the question of grant of financial assistance etc. There are other details mentioned in the said resolution but it is not necessary for us to refer to them since both Shri Ketkar, appearing for the University, and Smt. Gokhale, appearing for the State, fairly stated that as far as compliance with the requisite formalities and the availability of

infrastructure is concerned, there is nothing against the petitioner, which is admittedly a reputed institution of great standing in the State. Though the affidavits in reply filed on behalf of the University and the State Government are far from satisfactory, there is not even a whisper about the lack of infrastructure or lack of potentiality or competence or the failure to comply with any formality on the part of the petitioner.

13. We have reproduced section 82 of the 1994 Act in para 9 above. Sub-section (1) of section 82 deals with the preparation of Perspective Plan (also referred to as "Master Plan" in the correspondence) for educational development by the University. Sub-sections (2) and (3) deal with the making of an application by the Management before the last day of October of the year preceding the year from which permission is sought. Sub-section (4), which we have discussed above in paras 10 and 11 deals with the elaborate procedure to be followed by the Board and the Management Council. Sub-section (5) deals with grant of permission by the State Government having regard to its budgetary resources and other factors. The proviso to sub-section (5) gives the Government the power to grant permission even in a case where the University does not recommend the starting of a new college. Sub-section (6) prohibits the State Government directly entertaining any application for grant of permission. Section 83 deals with the procedure for affiliation.

14. Thus, it is clear from the two letters dated 24th February 1994 and 24th January 1995 that for the academic years 1994-95 and 1995-96, the University, after having complied with the requisite formalities in accordance with law, had recommended the petitioner's proposal for starting a Law College, at Sangli, In fact, in each of the two letters, the University had requested the State Government to ensure that before the 31st May of the year requisite permission was granted so that the college could start in June.

15. On 10th February 1995 the Registrar of the University wrote to the petitioner that after the approval was granted by the Management Council, the University had made a recommendation to the State Government on 24th January 1995 for grant of permission to the petitioner to open a Law College, at Sangli, from June 1995. However, the petitioner was informed that unless the prior permission of the State Government and the B.C.I. , was obtained, the actual teaching should not commence and if the petitioner did that, it would be solely on its own responsibility. However, the State Government did not take any action on the letter dated 24th January 1995. It is, thus, clear that despite all the formalities being completed by the petitioner and by the University and despite a specific request being made on 24th February 1994, the State Government did not discharge its statutory obligation for the academic year 1994-95. As far as the academic year 1995-96 is concerned, despite the petitioner having complied with all the formalities and despite the University having recommended the proposal after following the procedure laid down in section 82 of the 1994 Act, and a request being made to the State Government as far back as on 24th January

1995, no action was taken by the State Government for the academic year 1995-96 as well. The petitioner had first applied on 28th August 1993.

16. On the 25th September 1995 the petitioner again wrote to the B.C.I. reiterating its request for permission to start two Law Colleges; one at Sangli and the other at Karad from the academic year 1996-97. The petitioner mentioned the fact that the Committee consisting of Dr. Mutharmah and Shri D.V. Patil had paid visit to the proposed two colleges on 26th February 1995. On 12th September 1995 the petitioner wrote to the Chief Minister of the State informing him that the University had recommended its case and that permission should be granted to open the Law College. On 15th September 1995 a letter was written to the Deputy Chief Minister of the State informing him that the University had recommended the proposal and that permission may be granted to the petitioner.

17. On the 4th April 1996 the B.C.I. informed the petitioner that inspection of the proposed Law Colleges at Sangli and Karad was fixed on the 13th April 1996 and the two members who would be visiting the said Law Colleges were Shri P.C. Jain and Shri D.V. Patil. The two members visited the said colleges and submitted their report to the Bar Council. On August 20, 1996 the Secretary of the B.C.I. wrote to the Registrar of the University and to the petitioner that in the meeting of the B.C.I. held on 10th and 11th August 1996 the recommendation of the Legal Education Committee made in its meeting held on 27th July 1996 with regard to the petitioner's Law College, at Sangli, was considered. The recommendation was as under :-

"The Legal Education Committee considered the Inspection Report of Bharati Vidyapeeth's Law College at Sangli, Maharashtra, submitted by Shri D.V. Patil and P.C. Jain and also a letter No. Afflin/T-2/New College/19617 dated 15th March, 1994 received from the Registrar, Shivaji University, Kolhapur, addressed to the Government of Maharashtra intimating its affiliation. On consideration of the above materials, the Committee is of the view that permission to start Bharati Vidyapeeth's Law College at Sangli, Maharashtra, be accorded for teaching three year course for three years with morning classes only from 1996-97".

After quoting the above recommendation, the letter says that the B.C.I. accepted the above recommendation and this was informed to the petitioner for appropriate action.

18. On 12/14th September 1996 the petitioner wrote to the Secretary, Higher Education, Government of Maharashtra that that the B.C.I. had communicated its approval under letter dated August 20, 1996 and the recommendation of the Legal Education Committee that the petitioner should be permitted to start the Law College, at Sangli, for a Three year course from the year 1996-97 was accepted. A reference was also made to the letter dated 24-01-1995 whereby the University had recommended the proposal to the State Government. In the circumstances, the petitioner prayed to the State Government that it should be

granted permission u/s 82(5) of the 1994 Act for starting a Law College, at Sangli.

19. Apart from the unequivocal approval granted by the B.C.I. on the basis of the well-considered resolution of the Legal Education Committee of the B.C.I., we must refer to the letter dated 19th October 1996 issued by the Director of the Board of College and University Development. The letter is addressed to the Secretary, Higher Education, Government of Maharashtra. It says that for the Academic year 1995-96 the petitioner had applied for permission to open the Law College, at Sangli. The University had recommended the proposal to the State Government, but the State Government had not taken any action in the matter. The letter then states that the B.C.I. by its letter dated August 20, 1996 had granted permission to the petitioner to open the Law College from the academic year 1996-97, However, since that letter was received late, the college could not be started during the academic year 1996-97. The Director of the Board, however, categorically stated in the next para that, in the above mentioned circumstances, the permission granted by the B.C.I. was treated as valid for the academic year 1997-98. Hence, the Director of the Board requested the State Government to issue the necessary orders granting permission to start the Law College from June 1997. A copy of the letter of the B.C.I. dated August 20, 1996 was annexed to this letter of the Director.

20. On the basis of the permission granted by the B.C.I. on August 20, 1996 and the unequivocal letter dated 19th October 1996 issued by the Director of the Board requesting the Government to grant permission from June 1997, in accordance with the provisions of sub-section (3) of section 82, the petitioner again submitted the requisite application in the prescribed form on 30th October 1996 for the academic year 1997-98. The petitioner set out in details in the said application that it had the necessary infrastructure and the financial ability to run the Law College, at Sangli. The petitioner, therefore, sought approval of the University, permission of the State Government and affiliation of the University. On 25th November 1996 the petitioner wrote to the Secretary, Higher Education, that it had earlier applied for permission to open the Law College from the academic year 1996-97. However, the B.C.I. had granted permission on August 20, 1996. The University had treated the said B.C.I. permission as valid for the academic year 1997-98 and, therefore, the petitioner should be granted permission to open the Law College from the academic year 1997-98. Surprisingly, as in the last two years, no action was taken by the State Government even for the academic year 1996-97. As stated earlier, the petitioner had initiated the process on 28th August, 1993.

21. It is in these facts that the petition was filed on 24th April 1997. When the matter was taken up for admission on 19th June 1997, this Court passed a detailed order referring to the provisions of the Advocates Act, 1961 and the Maharashtra Universities Act, 1994. Rule was issued and interim relief in terms of prayer (e) was granted, which permitted the petitioner to open a Law College, at

Sangli, in accordance with the terms and conditions imposed by the B.C.I. for the academic year 1997-98. Counsel for the parties are agreed that there was no challenge to the order dated 19th June 1997 in the Apex Court and consequently, the petitioner opened the Law College at Sangli from June 1997 and 86 students were admitted to the First Year of the Three-year Law course. It must be stated that though the petitioner had initially applied for permission to open an evening Law College, the Bar Council has permitted the opening of a morning Law College and accordingly, the petitioner had opened the morning Law College in June, 1997 and is conducting the Three-year Law Course. The college starts at 7.15 A.M.

22. Affidavits-in-Reply have been filed on behalf of the two contesting respondents. Shri Mahadeo Nabwade, Superintendent (Affiliation), Shivaji University, has filed his affidavit and it is contended that there was no need for opening a second Law College at Sangli and that though the petitioner's applications for the academic years 1994-95 and 1995-96 were favourably recommended to the State Government, despite the B.C.I. having granted its approval on August 20, 1996 and despite the Board of College and University Development having recommended the petitioner's case on 19th October 1996, the petitioner's application was rejected on 28th December 1995 and 24th December 1996. The only reason given for rejection in the letter dated 28th December 1995 is that there was one Law College at Sangli. In the letter dated 24th December 1996, two reasons are given viz. that the location was outside the Draft Perspective Plan and secondly, there was one Law College already existing at Sangli. It is interesting to note that despite the recommendations of the University for the academic year 1994-95 and 1995-96 reliance is sought to be placed on the ground that there was already one Law College at Sangli. Admittedly, the other Law College at Sangli is in existence for the last more than 15 years. The figures of population disclosed by Shri Ketkar, appearing for the University, are relevant in this behalf. At Phaltan in Satara District a Law College has been permitted to be opened and affiliation has been granted. The population of Phaltan, as per the University records, is only 44,367. Another Law College at Barshi in District Solapur has been permitted to be opened and affiliations has been granted to it. The population of Barshi, as per the University records is 88,810. Both Phaltan and Barshi are taluka places in Satara and Solapur Districts respectively. It is then brought to our notice that Sangli town alone, excluding the adjoining and the population of the rest of the District, has a population of 1,93,197. On the basis of the figures furnished by the University, which are annexed to the Perspective Plan at "X" (Collectively) the population of the rest of the talukas in Sangli District would be around a lac and twenty-five thousand. Thus, Sangli District has approximately 3,18,000 population and there is only one Law College which is a day College.

23. As per the letter dated 28th December, 1995, the only ground for rejection stated in the annexure to the said letter is "Not recommended because one Law College". In the letter dated 24th December, 1996 and the statement annexed

thereto, two grounds for rejection are "Not recommended because the location is outside draft perspective plan and one Law College already exists in Sangli". In the light of these two letters, it is stated in the affidavit of Shri Nalavade that the letter dated 19th October, 1996 issued by the Board on the basis of the recommendations for the previous years and the approval granted by the B.C.I. on 20th August, 1996 could not have been issued. It is nobody's case that the letter dated 19th October, 1996 issued by the Board has been cancelled or withdrawn. We have already indicated in para 10 above the composition of the Board u/s 35 of the 1994 Act, which is a high power body consisting of senior academicians including the Vice Chancellor himself. It is also relevant to note that the letter dated 19th October, 1996 has been signed by Dr. J.F. Patil who is also the Chairman of the Committee appointed by the Vice-Chancellor u/s 82(1) of the 1994 Act for preparing the Draft Perspective Plan for educational development for the location of institutions of higher learning in a manner ensuring equitable distribution of facilities for Higher Education having due regard, in particular, to the needs of unserved and under-developed area within the jurisdiction of the University. The perspective plan was not annexed to the affidavit filed on behalf of the University. We requested Shri Ketkar to make available to us a copy of the said perspective plan. After the plan was prepared by the said Committee, in the meeting held on 22nd November, 1996, the Committee finalised the plan. It was then forwarded to the Board of College and University Department. The Board in its meeting held on 2nd December, 1996 granted its approval and forwarded the same to the Academic Council for its approval. The Academic Council in its meeting held on 28th February, 1997 granted its approval subject to certain modifications. One of the modifications suggested by the Academic Council assumes importance since it is in respect of the need for a post graduate department of law in Shivani University at Kolhapur. Item No. 13 which is one of the added items at page 10 of the cyclostyled perspective plan is the faculty of law. What is important, however, is the preamble in respect of the need for certain post graduate departments being opened in the University. It is categorically stated therein that having regard to the agricultural and industrial background and the need in the four Districts of Kolhapur, Solapur, Sangli and Satara, which form the area of operation of Shivaji University, it was necessary to start certain departments of post graduate studies in the University. One such department recommended at Item No. 13 is the department of law. It is obvious that having regard to the figures of population disclosed by the University itself, and the need for opening the department of law for post graduate studies in the University, the need for a morning college at Sangli could not have been overlooked by the University. A post graduate department of law will need more and more feeder Law Colleges.

24. In the Affidavit in reply dated 9th July, 1997 filed by Shri Ramdas Navsare, Administrative Officer, Higher Education, Kolhapur Region, on behalf of the State Government the pleadings are startling. In para 2 of the affidavit, it is categorically stated as under:

"I say that the Government of Maharashtra has not permitted the petitioner to open the proposed Law College at Sangli though the Shivaji University has recommended permission in favour of the petitioner. The main reason for refusing the permission to open Law College at Sangli is the financial burden on the exchequer of the State Government."

There is then a reference to the judgment of the Apex Court in the case relating to the Grant-in-aid by the State to the non Government Law College which issue had come up for consideration here. This Court in its decision in *Manubhai Paragji Vashi Vs. State of Maharashtra and Others*, , had taken the view that even the recognised private Law Colleges were entitled to the grant-in-aid. That decision was challenged by the State of Maharashtra before the Apex Court. The decision rendered by the Apex Court in *State of Maharashtra Vs. Manubhai Pragaji Vashi and others*, (for short *M.P. Vashi's case*). We will deal with the said decisions a little later. In para 3 of the affidavit of Shri Navsare, some observation of the Apex Court have been incorrectly quoted. We may ignore the mistakes. But what is stated at the end of para 3 is strange. It reads as under :

"I undertake to provide copy of the judgment by Apex Court as and when required. I say that perusing to the judgment passed by the Apex Court the State of Maharashtra was pleased to pass the Resolution dated 13- 6-95 to give the above mentioned judgment, annexed hereto and marked as Exhibit-1 is the copy of the said resolution dated 13-6-95".

We have quoted the concluding portion of para 3 as it is and it is difficult for us to appreciate what exactly the deponent wanted to convey. Mistakes apart, the judgment of the Apex Court in *State of Maharashtra v. M.P. Vashi* was rendered on 16th August, 1995. It is difficult to appreciate how the State Government could have passed the resolution on 13th June, 1995 (2 months prior to the date of judgment) after perusing the judgment of the Apex Court. The Resolution dated 13th June, 1995, obviously could have no reference to the situation which arose after the Apex Court judgment was delivered on 16th August, 1995. In the G.R. dated 13th June, 1995, after setting out the preamble, the decision in substance, is that in 9 Districts in the State there was not even a Single Law College. Therefore, if there were applications by any managements for starting new Law Colleges on No Grant basis, in these Districts and if the Universities had recommended opening of such Colleges then permission should be granted for opening of one Law College each in a District on No Grant basis.

25. The second para of the G.R. dated 13th June 1995 is with particular reference to the opening of a Law College in Ratnagiri District commencing with the Academic year 1995-96 on No Grant basis. There is nothing in the actual decision stated in the said Resolution to suggest that the Government had taken any policy decision of not sanctioning an additional Law College in an area where one Law College was already existing until the Government was able to provide atleast one Law College in every District. However, there is a categorical statement to this effect in para 5 of the affidavit of Shri Navsare which reads as under :

"In view of the above mentioned situation the Government has taken policy decision in not sanctioning additional Law College for the areas where the faculties are already existing, until the Government is able to provide atleast one Law College in every District."

We repeatedly asked Smt. Gokhale as to whether there was any other decision apart from the one stated in the Resolution dated 13th June, 1995 but she stated that there was none. In the preamble of the said Government Resolution what has been stated is that there was an increase in the number of people being attracted to the legal education and legal profession. The legal education is of a professional nature and, therefore, if there was increase in the facilities for legal education, there was bound to be additional financial burden on the State. Hence, it was decided that new Law Colleges should be permitted only on No Grant basis. However, since the appeal was pending before the Apex Court against the judgment of this Court in M.P. Vashi's case, if an application was made for opening of a new Law College it should be considered after the decision of the Apex Court. If in certain Districts there was not even a single Law College, then, in the interests of the public, a decision had to be taken. It is after this background stated in the preamble that the decision has been taken which we have summarised in para 24 above. In our view, there is nothing in the said G.R. dated 13th June, 1995 to suggest what has been specifically pleaded in para 5 of the affidavit of Shri Navsare.

26. In para 6 of the affidavit of Shri Navsare, filed on behalf of the State, it is stated as under :

"In the instant case there is already one Law College in Sangli namely N.S. Law College, since last 25 years. In view of the above mentioned position the petitioner was not granted permission to open new Law College in spite of recommendations in favour of the petitioner from the Shivaji University, Kolhapur as well as from the Bar Council of India."

The State Government has, therefore, made it clear that despite favourable recommendations by both, the Bar Council of India and Shivaji University, the only reason for refusing permission to open a new Law College at Sangli was that there was one Law College already existing since last 25 years.

27. It is in the light of the above pleadings that we will consider the submissions advanced before us. Shri Anturkar on behalf of the petitioner has raised the following contentions :

(i) Having regard to the earlier favourable recommendations on 24th February, 1994 for the Academic Year 1994-95 and 24th January, 1995 for the Academic Year 1995-96 and the approval granted by B.C.I. on 20th August, 1996, the rejection of the petitioner's proposal on 28th December, 1995 and 24th December, 1996 are wholly arbitrary, illegal and mala fide. Obviously, while issuing the letter dated 24th December, 1996, there is no application of mind at all to the letter dated 19th October, 1996 issued by the Board in favour of the

petitioner for Academic year 1997-98. The petitioner has the necessary infrastructure and Counsel contends that the respondents do not even whisper any objection as regards the petitioner's infrastructure and its capacity to run a Law College at Sangli.

(ii) In view of the approval granted by B.C.I. on 20th August 1996 and the fact that the said approval was based on the recommendations dated 27th July, 1996 made by the Legal Education Committee on the basis of the inspection report, it was obligatory for the University to accord its approval to the petitioner's proposal under sub-section (4) of section 82 of the 1994 Act and forward the same to the State Government. The rejection on the part of the University by its letters dated 28th December, 1995 and 24th December, 1996 is, therefore, arbitrary, mala fide and illegal vitiating the guarantee enshrined under Art. 14 of the Constitution of India.

(iii) In the event of the University granting its approval under sub-section (4) of section 82 and forwarding the proposal to the State Government, in the facts of the present case, having regard to the law laid down by the Apex Court in M.P. Vashi's case, (supra) it is obligatory for State Government to grant permission to the petitioner under sub-section (5) of section 82 to open the Law College at Sangli.

28. On the other hand, it is contended on behalf of the University that there was no obligation on the University to grant its approval despite the earlier recommendations of 24th February, 1994 for Academic year 1994-95 and 24th January, 1995 for the Academic year 1995-96. It is contended that despite the B.C.I. having accorded its approval on August, 20, 1996 the University could still withhold its approval on the grounds that (i) there was no recommendation in the perspective plan and (ii) there was already a Law College at Sangli.

29. As far as the State Government is concerned, it is contended before us that despite the law laid down by the Apex Court in M.P. Vashi's case (supra), the Government can refuse to grant permission to open a Law College if it imposes financial burden on the exchequer. It is categorically stated that even after perusing the decision of the Apex Court in M.P. Vashi's case and despite the fact that B.C.I. and the University had recommended the petitioner's proposal, a decision was taken not to grant permission to the petitioner's college in view of the fact that one Law College existed at Sangli.

30. The first two contentions of Shri Anturkar can be considered together. We have already indicated above, that the petitioner is a reputed institution and, as stated in its letter dated 18th May, 1994 addressed to B.C.I., it was established on 10th May, 1964. It has opened several educational institutions right from pre-primary to post-graduate stages covering practically all disciplines in professional and non-professional faculties. As on 18th May, 1994 the petitioner was conducting 9 post-graduate Research Institutions; 12 professional colleges, 3 non professional colleges, 5 polytechnics, 11 junior colleges, 24 high schools and

8 primary schools. In 1994, about two lacs students were taking education in different institutions run by Bharati Vidyapeeth from pre-primary to the post-graduate level. It had 6000 employees in 1994. The main objective of the petitioner is to bring about intellectual awakening and transformation in educational, economic, social and cultural fields in India. It was already running two Law Colleges; one at Pune and other at Kolhapur. There is no denial of any of these averments before us. We have referred to the fact that a high power Academic Committee appointed by the Executive Council under the 1974 Act had recommended opening of a new Law College at Sangli and the Executive Council had accepted its recommendation and in accordance with sub-section (4) of section 43 of the said 1974 Act, approval was communicated to the State Government on 24th February, 1994 with a request to grant permission before 31st May, 1994. Similarly, on 24th January, 1995, after the said 1994 Act came into force on 22nd July, 1994, a similar Committee appointed by the Management Council had scrutinised the petitioner's proposal and made recommendations which were accepted by the Management Council and approval was accorded under sub-section (4) of section 84 and the proposal was forwarded to the State Government for necessary permission being granted before 31st May, 1995 for the Academic Year 1995-96. We have perused the G.R. dated 24th September, 1993 which is the basis of earlier recommendations for the year 1994-95 and 1995-96. We have considered the perspective plan prepared on 22nd November, 1996 which was approved by the Board on 2nd December, 1996; by the Academic Council on 28th February, 1997; by the Management Council on 6th June, 1997 and finally by the Senate on 4th November, 1997. For a population of 44,367 at Phaltan in Satara District, a Law College has been permitted by the State Government to which affiliation has been granted by the University. Even at Barshi in Solapur District for a population of 88,810 opening of a Law College has been permitted by the Government and affiliation has been granted by the University. Population of Sangli town alone is 1,93,197 and if we consider the population of other talukas in Sangli District, it would be an additional approximately 1,25,000. There is only one day Law College at Sangli excluding the petitioner's Law College.

31. It is, in the above circumstances, that the B.C.I. considered the proposal made by the petitioner for opening a Law College. The Committee appointed by B.C.I. visited Sangli and inspected the proposed college. It made a report to the Legal Education Committee of the B.C.I. The Legal Education Committee considered the report and passed a resolution on 27th July, 1996 that the petitioner be accorded permission for teaching 3 years course in morning classes from the Academic Year 1996-97. This resolution of the Legal Education Committee passed on 27th July, 1996 was considered by B.C.I. in its meeting held on 10th and 11th August, 1996 and, on consideration of the entire material, the B.C.I. accepted the recommendation made by the Legal Education Committee and granted its approval to the petitioner's proposal. This is clear from the communication dated 20th August, 1996 issued by B.C.I. to the

Registrar of the University and to the Director of the petitioner. In these circumstances, it is difficult to appreciate the attitude of both the University and the State Government.

32. In *Sheela Barse v. State of Maharashtra*, 1988 (1) Bom.C.R. 58 : AIR 1988 SC 378, the Apex Court was considering the question of grant of legal assistance to the poor and indigent persons particularly to accused who were in custody and who were complaining of violation of provisions of Article 39A as also Articles 14 and 21 of the Constitution. In the very opening para of the judgment at pages 379-380, the Apex Court highlighted the need for affording legal assistance to the poor and indigent persons and observed thus :

".....We have already had occasion to point out in several decisions given by this Court that legal assistance to a poor or indigent accused who is arrested and put in jeopardy of his life or personal liberty is a constitutional imperative mandated not only by Article 39A but also by Articles 14 and 21 of the Constitution. It is a necessary sine qua non of justice and where it is not provided, injustice is likely to result and undeniably every act of injustice corrodes the foundations of democracy and rule of law, because nothing rankles more in the human heart than a feeling of injustice and those who suffer and cannot get justice because they are priced out of the legal system, lose faith in the legal process and a feeling begins to overtake them that democracy and rule of law are merely slogans or myths intended to perpetuate the domination of the rich and the powerful and to protect the establishment and the vested interests. Imagine the helpless condition of a prisoner who is lodged in a jail who does not know to whom he can turn for help in order to vindicate his innocence or defend his constitutional or legal rights or to protect himself against torture and ill-treatment or oppression and harassment at the hands of his custodians. It is also possible that he or the members of his family may have other problems where legal assistance is required but by reason of his being incarcerated, it may be difficult if not impossible for him or the members of his family to obtain proper legal advice or aid. It is, therefore, absolutely essential that legal assistance must be made available to prisoners in jails whether they be under-trial or convicted prisoners."

In our view, this approach of the Apex Court would necessitate ensuring that there are adequate number of Law Colleges even in the mofussil areas where citizens do require legal assistance at every step in the day today life in a welfare State like ours. Right from the cradle to the grave legal assistance is required at every stage and, therefore, the State must ensure availability of a sufficient number of lawyers adequately trained. Indeed, in criminal cases, in order to enable the State to afford free legal aid and guarantee speedy trial, a vast number of persons trained in law are essential. Legal aid is required in many forms at various stages even before and after the legal proceedings are initiated in a Court of law or other appropriate forum. Legal education has to meet the growing demands of a growing population. If there is lack of sufficient

Government Colleges establishment of private college has to be welcome, albeit, subject to the fulfilment of the pre-requisite conditions and the availability of infrastructure.

33. We may also refer to the decision of the Apex Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., . The Apex Court was called upon to consider three questions which were as under :-

- i) Whether Constitution of India guarantees a fundamental right of education to its citizens?
- ii) Whether there is a fundamental right to establish and run an educational institution under Article 19(1)(g) or any other provisions in the Constitution?
- iii) Does recognition and affiliation make an educational institution an instrumentality?

While answering these questions, the Apex Court has referred to the provisions of the Indian Medical Council Act, 1956 in para 155 of the judgement. The provision of the All India Council for Technical Education Act, 1987 has been considered in para 156. It has then observed in para 160 under the heading "Ground Reality" that the outlay of education was woefully inadequate as compared to the need of the people, whereas in many other countries the outlay on education was 6% to 8% of their Gross National Product, in India it was only 3% of the Gross National Product. It has further been observed that if the State Government was not in a position to devote more resources and the need for educational institutions was constantly growing, it was not possible to do with or without private educational institutions. Hence, it was observed that an alternate system has to be devised to involve private and voluntary efforts in the field of education in conformity with the accepted norms and goals as stated in the new National Education policy evolved by the Central Government. After observing as above, it has been stated in para 161 as under :-

"161. The hard reality that emerges is that private educational institutions are a necessity in the present day context. It is not possible to do without them because the Governments are in no position to meet the demand particularly in the sector of medical and technical education which calls for substantial outlays. While education is one of the most important functions of the Indian State it has no monopoly therein. Private educational institutions including minority educational institutions too have a role to play.

Then in para 163 of the judgment, at page 2243 of the report it was observed that so far as the unaided institutions were concerned, it was obvious that they cannot be compelled to charge the same fees as was charged in governmental Institutions. Questions, however, was how to encourage private educational institutes without allowing them to commercialize education. The Apex Court left that this was the troublesome question facing the Society, the Government and the courts today. With a view to answering the said question, the Court has

evolved a Scheme in Unnikrishnan's case which regulates the structure of admission seats and also the fees structure. Though the said observations have been made in the light of the admission process in the Medical and Engineering Colleges, it would be apposite to rely upon the underlined portion in the present context of the need to open a private Law College when the State Government is not in a position to cater to the said need. As indicated earlier, if the right to obtain legal assistance is to be effective and if the society needs a Law College, there is no reason why the State Government should decline to grant permission on considerations which are wholly irrelevant and extraneous to the Scheme of the provisions of section 82 of the 1994 Act.

34. This Court had occasion to consider the question of Grant-in-aid to recognised Non-Government Law Colleges in the State. In the case of *Manubhai Pragaji Vashi v. State of Maharashtra and others*, 1989 M.L.J. 344 it was held that to refuse to grant aid to the recognised Non-Government Law Colleges would amount to discrimination between such colleges from whom Grant-in-aid was withheld and other Non-Government Colleges with faculties such as Arts, Science, Commerce, Engineering and Medicine to whom Grant-in-aid was given. It was held that it was of some significance that if grants were withheld from Non-Government Law Colleges, underdeveloped areas would suffer. This Court, therefore, issued directions to the State Government to extend the Grant-in-aid scheme to all the Government recognised but private Law Colleges on the same criteria as such grants were given to private Colleges in other faculties, viz, arts, science, commerce, engineering and medicine. There were other directions with which we are not concerned. It is true that the State Government had challenged the decision in the Apex Court and in the decision rendered on 16th August, 1995, in *State of Maharashtra Vs. Manubhai Pragaji Vashi and others*, supra, Apex Court considered the entire issue in the light of the provisions of right to free legal aid and speedy trial as guaranteed under Art. 21. After considering some of its earlier decisions, the Court observed in para 16 of the judgment at pages 9 and 10 as under :

"16. In the light of the above, we have to consider the combined effect of Article 21 and Article 39A of the Constitution of India. The rights to free legal aid and speedy trial are guaranteed fundamental rights under Article 21 of the Constitution. The preamble to the Constitution of India assures Justice, social economic and political. Article 39A of the Constitution provides equal justice and free legal aid. The State shall secure that the operation of the legal system promotes Justice. It means Justice according to law. In a democratic polity, governed by rule of law, it should be the main concern of the State, to have a proper legal system. Article 39A mandates that the State shall provide free legal aid by suitable legislation or schemes or in any other way to ensure that opportunities for securing Justice are not denied to any citizen by reason of economic or other disabilities. The principles contained in Article 39A are fundamental and cast a duty on the State to secure that the operation of the legal system promotes Justice, on the basis of equal opportunities and further

mandates to provide free legal aid in any way by legislation or otherwise, so that Justice is not denied to any citizen by reason of economic or other disabilities. The crucial words are (the obligation of the State) to provide free legal aid by suitable legislation or by schemes or "in any other way", so that opportunities for securing Justice are not denied to any citizen by reason of economic or other disabilities. The above words occurring in Article 39A are of very wide import. In order to enable the State to afford free legal aid and guarantee speedy trial, a vast number of persons trained in law are essential. Legal aid is required in many forms and at various stages for obtaining guidance, for resolving disputes in courts, tribunals or other authorities. It has manifold facets. The explosion in population, the vast changes brought about by scientific, technological and other developments, and the altogether enlarged field of human activity reflected in modern society, and the consequent increase in litigation in courts and other forums demand that the service of competent persons with expertise in law is required in many stages and at different forums or levels and should be made available. The need for a continuing and well organised legal education, is absolutely essential reckoning the new trends in the world order, to meet the ever growing challenges. The legal education should be able to meet the ever growing demands of the society and should be thoroughly equipped to cater to the complexities of the different situations. Specialisation in different branches of the law is necessary. The requirement is of such a great dimension, that sizeable or vast number of dedicated persons should be properly trained in different branches of law, every year by providing or rendering competent and proper legal education. This is possible only if adequate number of Law Colleges with proper infrastructure including expert law teachers and staff are established to deal with the situation in an appropriate manner. It cannot admit of doubt that, of late there is a fall in the standard of legal education. The area of "deficiency" should be located and correctives should be effected with the co-operation of competent persons before the matter gets beyond control. Needless to say that reputed and competent academics should be taken into confidence and their services availed of, to set right matters. As in this case, a sole Government Law College cannot cater to the needs of legal education or requirement in a city like Bombay. Lack of sufficient colleges called for establishment of private Law Colleges, which are duly recognised by the concerned University and/or the Bar Council of India and/or the appropriate authorities, as the case may be, should be afforded reasonable facilities to function effectively and in a meaningful manner. That requires substantial funds. Under the label of self financing institutions the colleges should not be permitted to hike the fees to any extent in order to meet the expenses to provide the infrastructure and for appointing competent teachers and staff. The private Law Colleges, on their own, may not afford to incur the huge cost required in that behalf. The "standard" of legal education and discipline is bound to suffer. It should not so happen for want of funds. The "quality" should on no account suffer in providing free legal aid and if it is not so, the free legal aid will only be a farce of make believe or illusory or a meaningless ritual. That should not be. It is in that direction the Grant-in-aid by

the State will facilitate and ensure the recognised private Law Colleges to function effectively and in a meaningful manner and turn out sufficient number of well trained or properly equipped law graduates in all branches year after year. The will in turn enable the State and other authorities to provide free legal aid and ensure that opportunities for securing Justice are not denied to any citizen on account of any disability. These aspects necessarily flowing from Article 21 and 39A of the Constitution were totally lost sight of by the Government when it denied the Grant-in-aid to the recognised private Law Colleges as was afforded to other faculties. We would add that the State has abdicated the duty enjoined on it by the relevant provisions of the Constitution aforesaid. In this perspective, we hold that Article 21 read with Article 39A of the Constitution mandates or casts a duty on the State to afford Grant-in-aid to recognised private colleges, similar to other faculties, which qualify for the receipt of the grant. The aforesaid duty cast on the State cannot be whittled down in any manner, either by pleading paucity of funds or otherwise. We make this position clear."

These are observations of the Apex Court underline the importance of providing proper legal education and making legal assistance available if rule of law is to survive in this country. The Government's obligation to provide free legal aid in certain criminal cases has been held to be flowing from Articles 21 and 39-A of the Constitution. It is unfortunate that despite these strong observations and mandatory directions, the State Government still pleads in para 2 of the affidavit of Shri Navasare (para 24 above) that the main reason for refusing permission to the petitioner was the financial burden on the exchequer. This affidavit is made on 9th July 1997.

35. The affidavit of the University also leaves much to be desired. The University had itself recommended the petitioner's proposal after following the procedure laid down in section 43 of the 1974 Act for the Academic year 1994-95 when it wrote to the State Government on 24th February, 1994. The University had considered the norms laid down by the State Government in its resolutions dated 27th November, 1986 and 24th September, 1993. Again for the Academic Year 1995-96 after the 1994 Act came into force on 22nd July, 1994, the University complied with the elaborate procedure u/s 82 and after a detailed scrutiny by the Board - an academic body, the Management Council granted its approval under sub-section (4) of section 82 and forwarded the proposal to the State Government for granting permission under sub-section (5) of section 82. Even on this occasion, the University considered its perspective plan and guidelines in the Government Resolution dated 24th September, 1993. If is thereafter that the B.C.I. had applied its mind and after a Committee had inspected the proposed Law College at Sangli, a report was made to the Legal Education Committee which considered the entire material and recommended grant of permission for teaching three years Course from the Academic Year 1996-97. This recommendation of the Legal Education Committee was considered in the meeting of the B.C.I. which is a Apex Body under the Advocates Act. On 10th and 11th August, 1996 the B.C.I. accepted the recommendation of its Legal

Education Committee. All this is reflected in the letter dated 20th August, 1996 written to the Registrar of the University and to the petitioner.

36. We must also emphasise the fact that a high power academic body like the Board of College and University Development constituted u/s 35 of the 1994 Act had applied its mind and considered the matter and informed the Secretary, Higher Education, Government of Maharashtra on 19th October, 1996 that permission to open a Law College should be granted for the Academic year 1997-98 commencing with June, 1997. It is really unfortunate that the University, which should really function as a loco-parents qua a college, should take a somewhat litigious, attitude in its affidavit and try to justify the letters dated on 28th December, 1995 and 24th December, 1996. The first letter dated 28th December, 1995 is based on a solitary one line ground "not recommended because one Law College". The second rejection of 24th December, 1996 is again based on the grounds "not recommended because location is outside the Draft Perspective Plan and one Law College already existing in Sangli." We have considered the figures of population of other smaller towns like Phaltan and Barshi where Law Colleges have been permitted to be opened and to which affiliation has been granted. We have considered the perspective plan. The view taken by the authorities concerned which sanctioned the said plan was that there was agricultural and industrial growth in the four Districts of Kolhapur, Solapur, Sangli and Satara and it was necessary to open a post-graduate department of law in Shivaji University. In our view, there is nothing either in the perspective plan or elsewhere in the affidavit before us to suggest anything against the petitioner's claim for opening of a morning Law College at Sangli. There is not even an allegation against the petitioner's infrastructure or any other requirement. The mere fact that one Law College is existing is, in our view, not by itself a valid ground for rejecting permission to the second Law College. In our view, there is no valid justification whatsoever in either of the two rejections namely of 28th December 1995 and 24th December, 1996. We have, therefore, no hesitation in accepting the first two contentions of Shri Anturkar and rejecting the respondents' submissions in that behalf. We hold that having regard to the earlier favourable recommendations of 24th February, 1994 for the Academic Year 1994-95, 24th January 1995 for the Academic Year 1995-96 and the approval granted by B.C.I. on 20th August, 1996, rejection of the petitioner's proposal on 28th December, 1995 and 24th December, 1996 are wholly arbitrary, illegal and mala fide vitiating the guarantee of equal protection of law enshrined under Article 14 of the Constitution of India. It is obvious that the letter dated 19th October, 1996 issued by the Board of College and University Development has not even been considered while issuing the letter dated 24th December, 1996. There is thus total non-application of mind and arbitrariness on the part of the University in not granting approval to the petitioner's proposal under sub-section (4) of section 82 of the 1994 Act. The University has, therefore, clearly failed in exercise of its statutory duties under sub-section (4) of section 82 of the 1994 Act.

37. The third contention of Shri Anturkar is that in the event of the University granting its approval under sub-section (4) of section 82 and forwarding the proposal to the State Government, it is necessary for the State Government to grant permission under sub-section (5) of section 82. We must hold that in the light of the ratio of the decisions of the Apex Court in (i) Sheela Barse Vs. State of Maharashtra, , (ii) Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., and (iii) State of Maharashtra Vs. Manubhai Pragaji Vashi and others, , in the facts of the present case, it was obligatory for the State Government to grant permission to the petitioner under sub-section (5) of section 82 of the 1994 Act to open a Law College at Sangli. Nothing adverse has been pointed out in the affidavit of the State Government. The State Government's attitude of pleading the excuse of financial burden is wholly impermissible in view of the clear mandate of the Apex Court in M.P. Vashi's case. The fact that another Law College existed at Sangli is not sufficient to refuse permission to the petitioner. The figures of population of smaller towns like Phaltan and Barshi, where Law Colleges have been opened which have been affiliated totally falsifies the case of the respondents. The perspective plan justifies the need for opening of a post graduate department of law in Shivaji University. The total population of Sangli town and District would be approximately 3,18,000 at the relevant time. Opening of a morning Law College at Sangli was justified since the existing Law College was a day Law College. In the circumstances, the third contention of Shri Anturkar also succeed and there is no merit in the frivolous objections raised in the affidavit of the State Government which shows total non application of mind and a somewhat defiant attitude in the teeth of the law laid down by the Apex Court in M.P. Vashi's case (para 34 above).

38. At this stage, it is necessary to consider the importance of the approval granted by the B.C.I. in its meeting held on 10th and 11th August, 1996 as reflected in the letter dated 20th August, 1996. We will briefly refer to some of the provisions of the Advocates Act, 1961 and the Rules framed thereunder. Section 7 of the Act. enumerates the functions of B.C.I. Clause (h) of sub-section (1) of section 7 states that one of the functions of the B.C.I. is to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils. Clause (i) stipulates one more function namely to recognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf. Section 49 of the Act empowers the B.C.I. to make Rules. Under Clause (af) of sub-section (1) of section 49 such Rules may prescribe the minimum qualifications required for admission to a course of degree in law in any recognised University. Clause (d) of sub-section (1) of section 49 the rules may deal with the standards of legal education to be observed by Universities in India and the inspection of Universities for that purpose. When we come to the Rules

framed by the Bar Council of India in exercise of its powers u/s 49 of the Advocates Act, we find that there "s a specific Chapter-Part IV dealing with the "Standards of Legal Education and Recognition of Degrees In law For Admission as Advocates". Schedule 1 to the Rules in part A and B contains the directives which are issued under Rule 21 in part A and Rule 14 in part B of the said rules. They lay down the details as to the maximum strength of students in a class, requirement as to building, library, accommodation for the teaching staff, provision for playground etc. Part A deals with the New Five Year-Course and part B deals with the Old-Three Year-Course. When we come to part B dealing with the Old Three-Year Course, with which we are concerned in this petition, Rule 2 permits the College being conducted either in the morning or in the evening or whole time during the day. Rule 3 deals with the requirement of minimum 66% attendance at the lectures in each of the subjects as also at the tutorials, moot courts and practical training course. Rule 4 says that Law College should, ordinarily, be located at the place where Share is at least a District Court or a Circuit District Court or within such distance thereof as B.C.I. permits. We are dealing with the District Head Quarter like Sangli in the present case. Rule 12 provides that the college shall not start imparting instructions in a course of study unless its affiliation has been approved by B.C.I. Rule 13 dealing with the procedure of affiliation sets out the details of the application to be made to the Secretary of the B.C.I. which is to be sent through the Registrar of the University with its recommendations and the inspection fee of Rs. 25,000/-. The Committee of inspection has to give its report and reasons why it recommends the approval of affiliation to a new Law College. It may specifically recommends as to why additional Law College is required at a place. Rule 14 empowers the B.C.I. to issue directives from time to time for maintenance of standards of legal education. The College/University is expected to follow them as compulsory. In our view, therefore, the provisions of the Advocates Act, 1931 and rules framed thereunder are almost a complete Code and ensure maintenance of proper standards in the matter of legal education.

39. In the light of the stringent provisions contained in the Advocates Act and the rules framed thereunder, Shri Anturkar went to the extent of contending that once the University had accorded its approval under sub-section (4) of section 82 of the 1994 Act as was done in the present case for the Academic Year 1994-95 under letter dated 24th February, 1994 and for the Academic year 1995-96 under letter dated 24th January, 1995 and the B.C.I. had conveyed its approval in its letter dated 20th August, 1996 and further the Board of College and University Development had written to the State Government on 19th October, 1996 requesting for permission to open a Law College from 1997-98, it was obligatory on the State Government to grant permission. Counsel contended that if there is anything in sub-section (5) of section 82 which may entitle the State Government to refuse to grant permission, such a provision contained in sub-section (5) of section 82 would be ultra vires the provisions of section 7(1)(h) and (i) of the Advocates Act read with some of the rules which we have referred

to above. We are not examining the validity of the permissions of section 82(5) of the 1994 Act since, in the facts of the present case, we have come to the conclusion that, on merits, the rejection of the petitioner's proposal by the University under its letters dated 28th December 1995 and 24th December, 1996 was wholly unjustified, arbitrary and illegal and was, therefore, legally mala fide. We have already indicated above that the affidavit filed by the University and the State Government show total non-application of mind and are not consistent with the law laid down by the Apex Court in M.P. Vashi's case. Shri Anturkar sought to rely upon two decisions of the Apex Court in support of his contention that the provisions of section 82(5) of the 1994 Act were repugnant to some of the provisions of the Advocates. Act and the rules framed thereunder. Reliance was placed on the decisions in (i) State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, and (ii) Thirumuruga Kirupananda Variyarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others, . In the view that we are taking on the merits of this case, it is not necessary for us to examine the contention based on the provisions of Articles 246 and 254 of the Constitution of India. Hence, we express no opinion on this legal contention raised by Shri Anturkar.

40. We may now sum up our conclusions as below.

i) The petitioner is an educational institute of great repute as is evident from its letter dated 18th May 1994 sent to the B.C.I. It conducts several institutions even upto the post graduate level in various disciplines and has a large infrastructure. There is no whisper against the petitioner's capacity to run the morning Law College at Sangli or availability of necessary infrastructure.

ii) The figures of population and the grant of permission to Law Colleges at smaller places like Phaltan and Barshi in the area of operation of Shivaji University as also the perspective plan prepared u/s 82(1) of the 1994 Ad, in our view, justifies the opening of a morning Law College at Sangli having regard to the fact that population of Sangli town was over 1,93,000 and that of the talukas adjoining it, in the same District, was about 1,25,000.

iii) The University itself, had for the academic Year 1994-95 recommended the petitioner's proposal on 24th February, 1994 to the State Government after following the elaborate procedure u/s 43 of the 1974 Act. In fact the University had requested the State Government to accord permission before 31st May 1994. This was on a consideration of the Master Plan prepared by the University and guidelines laid down in the Government Resolutions dated 27th November 1986 and 24th September 1993.

iv) For the Academic Year 1995-96 also, after the 1994 Act came into force on 22nd July, 1994, the University had followed the elaborate procedure u/s 82 of the said Act and had, on 24th January 1995 recommended the proposal to the State Government for grant of permission under sub-section (5) of section 82 of the Act. A request was made to the State Government to grant permission before

31st May 1995 to enable to the petitioner to start the college for the Academic year 1995-96. This again is based on a consideration of the Master Plan and guide-lines laid down in the Government Resolution dated 24th September, 1993.

v) Having considered the guide lines dated 24th September 1993 and the perspective plan which had been prepared and sanctioned u/s 82 of the said 1994 Act, the concerned authorities had come to the conclusion that having regard to the agricultural and industrial development in the four Districts of Kolhapur, Solapur, Sangli and Satara, there was a need for opening a post graduate department of law in Shivaji University.

vi) The sole reason given in the letter dated 28th December, 1995 for rejection of the petitioner's proposal is totally arbitrary and shows clear non application of mind. It is violative of the provisions of Article 14 of the Constitution of India.

vii) The two reasons given in the letter dated 24th December, 1996 also show non-application of mind and suffer from arbitrariness which vitiates the guarantee under Article 14 of the Constitution of India.

viii) The affidavit filed by the State Government shows scant respect for the law laid down by the Apex Court in M.P. Vashi's case (para 34 supra). The averments in the said affidavit are contrary to the directions of the Apex Court. The excuse of financial burden is wholly impermissible now and could not have been pleaded by the State Government in its affidavit filed on 9th July, 1997 in the face of the decision of the Apex Court in M.P. Vashi's case which was rendered on 16th August, 1995. The contents of para 5 of the affidavit are not justified by any policy decision. The contents of para 6 of the said affidavit again show non application of mind and arbitrariness. Obviously the State Government has not cared to look into the decision of the Apex Court in M.P. Vashi's case or the approval accorded by the B.C.I. as far back as on 20th August, 1996.

ix) The University is bound by the contents of its letter dated 19th October 1996 which is neither recalled nor cancelled.

x) Assuming that the Government Resolution dated 13th June, 1995 is still valid after the decision of the Apex Court in M.P. Vashi's case, there is nothing in the said G.R. to suggest that the Government had taken a policy decision not to permit an additional Law College even where there is a need for a second Law College and where the B.C.I. and the University have approved the Law College .Reliance on the G.R. dated 13th June, 1995 is, therefore, wholly improper and thoroughly misplaced.

41. In view of the above we pass the following order:

i) The rejection of the petitioner's proposal under letter dated 28th December, 1995 sent by the Deputy Registrar and its communication dated 15th January, 1996 is hereby quashed and set aside.

ii) The rejection of the petitioner's proposal under letter dated 24th December,

1996 and its communication on 3rd January 1997 by the Deputy Registrar of the University is hereby quashed and set aside.

iii) In view of the approval accorded by the B.C.I. under its letter dated 20th August, 1996 and the letter dated 19th October, 1996 issued by the Board of College and University Development, the petitioner's application for opening of a morning Law College, at Sangli shall be deemed to have been approved by the Shivaji University under sub-section (4) of section 82 of the Maharashtra Universities Act, 1994, from the academic year 1997-98 onwards for a Three-year Degree Law Course.

iv) In view of the aforesaid the petitioner's application for permission to open a morning Law College at Sangli shall be deemed to have been granted by the State Government and permission shall be deemed to have been granted to open the said Law College under sub-section (5) of section 82 of the Maharashtra Universities Act, 1994, from the Academic year 1997-98 onwards for a Three Year Degree Law Course.

v) In view of the ad-interim order passed by this Court on 19th June, 1997 and the order dated 17th July, 1998 passed in C.A. No. 5642 of 1998, we hereby direct that provisional affiliation be deemed to have been granted to the petitioner's college for the Academic year 1997-98 and 1998-99 in accordance with the provisions of section 83 of the Maharashtra Universities Act, 1994.

vi) We however, direct that for obtaining affiliation for the Academic year 1999-2000 the petitioner will be required to make the requisite application and follow the procedure laid down under the Maharashtra Universities Act, 1994.

vii) With a view to obviating any hardships to the students who have been admitted during the Academic Years 1997-98 and 1998-99 under the orders passed by this Court on 19th June, 1997 and 17th July, 1998, we direct the second respondent University to permit such students to appear for the requisite examinations and further to declare the results of the students who so appear. It is our unfortunate experience that despite the orders of this Court students or their parents are required to approach the Court for (a) permission to appear in the examination, (b) for direction to declare their results and (c) permission to admit them in the next year. We wish to obviate such injustice to the students in particular.

42. Rule is accordingly made absolute in the above terms with no order as to costs.

43. Petition allowed.