

(1987) 03 BOM CK 0058

In the Bombay High Court

Case No : Writ Petition No. 1070 of 1986

Gramaudyogik Shikshan Mandal and Another

APPELLANT

Vs

Marathwada University and Others

RESPONDENT

Date of Decision : 25-03-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Marathwada University Act, 1974 — Section 24, 43, 43(4A), 43(7), 44

Citation : (1987) 2 BomCR 572 : (1988) MhLj 87

Hon'ble Judges : P.V. Nirgudkar, J; B.N. Deshmukh, J

Bench : Division Bench

Advocate : S.C. Bora, for the Appellant; U.S. Binwade and V.G. Gangapurwale, A.G.P., for the Respondent

Judgement

B.N. Deshmukh, J.

1 This petition is filed by Gramaudyogik Shikshan Mandal, Aurangabad, and Marathwada Institute of Technology, Aurangabad. The Gramaudyogik Shikshan Mandal is registered under the Societies Registration Act on 27-1-1976. It is also registered under the Public Trust Act on 13th of March, 1976. The object of the Mandal is to provide educational facilities, with a view to impart technical education. The Marathwada Institute of Technology, Aurangabad, is conducted by the petitioner No. 1. The institute is conducting engineering courses and is affiliated to the Marathwada University.

2. In this writ petition Civil Application No. 533/1987 is filed by five students who are taking education in the college run by petitioner No. 1 Gramaudyogik Shikshan Mandal. By this application they wanted to be added as petitioners to the main petition. It is not possible at this late stage to allow them to be added as petitioners but as the decision of the writ petition is likely to affect their interests, they are allowed to intervene and we heard learned Counsel Shri A.B. Naik on behalf of them in the main petition also.

3. The petitioner No. 1 was granted permission to start Engineering College having degree course on non-grant basis and to admit 180 students in the year 1984-85. The Director of Technical Education, Government of Maharashtra, has issued a letter on 23rd of July, 1984 based on the letter of the Government dated 21st of July, 1984, permitting respondent No. 1 Society to start Engineering College, having degree course on non-grant basis from the academic year 1984-85. For the years 1984-85 and 1985-86 even though the permission was in favour of the petitioner society to take 180 students for degree course in Engineering, actually they have admitted less than 100 students each year.

4. On 22nd of May, 1986 the petitioner society applied to the Director of Technical Education, respondent No. 2, to increase the intake capacity of students, both for degree courses and for diploma courses. By this application the petitioner society wanted to increase the number of students for degree course from 180 to 320. After making this application and without even waiting for the approval or sanction by the Director it seems that the Petitioner admitted 240 students to Engineering Degree Course in the months of July/August of the years 1986-87. Subsequently, on 1st October, 1986, the Director of Technical Education, respondent No. 2 granted Permission to the petitioner to admit 265 students instead of their request for 320 students for the year 1986-87 but the institution had already admitted 240 students without waiting for the permission from the Director. It may also be noted here at this stage that the petitioners have never applied to the Marathwada University, to which they are affiliated, for increase in number of strength of the students for the degree course. They applied only to the Director of Technical Education who granted permission only on 1st of October, 1986.

5. Later on, the forms of 240 students were forwarded in the month of September, 1986, to the Marathwada University for the First Semester Examination which was scheduled from 27th October, 1986. The Marathwada University inspite of receipt of the forms did not forward the hall tickets of the students to appear at the examination. The petitioners further contended that they had a telephonic talk with the Assistant Superintendent of the University and the Assistant Superintendent called upon the petitioners to communicate the names of 180 students to whom University should issue hall tickets for the ensuing examination of the institute because, according to him only 180 students are entitled to appear for the said examination as that was the sanctioned strength. The college authorities were interested in getting hall tickets for all 240 students as, according to them, the Director of Technical Education had increased the intake capacity to 265.

6. It is further contended that even till the filing of the petition the University authorities have not issued hall tickets and seat numbers to the students. Therefore, the present petition is filed by the petitioner for getting directions from this Court to permit 240 students of the First Year Engineering Degree Course of the petitioner institute to appear for October/November 1986

examination which was scheduled from 27th October, 1986. The other relief which was claimed by the petitioner in this petition is to recognise the intake capacity of the petitioner institute in accordance with the letter issued by the Director of Technical Education, respondent No. 2 on 1-10-1986 granting permission to admit 265 students instead of 180 granted at the time of affiliation.

7. Shri Bora learned Counsel appearing for the petitioner, has contended that the action of the University in not granting hall tickets and not permitting students of the petitioner institution to appear for the examination is contrary to the principles of natural justice and is also violative of the provisions of Article 14 of the Constitution of India inasmuch as several other institutions who had admitted students in excess of authorised strength were permitted to send their students for examination. The seat numbers and the hall tickets were also issued to them. Shri Bora also contended that the Director of Technical Education who is competent to grant increased number of strength of the students has in fact granted permission on 1st October, 1986 for admitting additional strength of 85 students for the academic year 1986-87. But as the letter mentions the whole of academic year of 1986-87 the students who were admitted under bona fide belief should be allowed to take examination and it should be presumed that the Director has authorised the strength of 265 students not only for the year 1986-87 but for future also. For that matter Shri Bora, learned Counsel for the petitioner, placed reliance on the Government resolution dated 21st May, 1983. (Annexure A to the petition). It may be noted at this stage that on 24-10-1986 at the time of admission of the petition the following order was passed.

"Heard the learned Counsel of all the sides, Rule. Service waived for all the respondents. Shri Sawant opposes grant of interim relief mainly on 3 grounds :

- (i) The petitioner did not route its application to Rule 2 (dated 22-5-86) for increase of intake capacity through the Rule 1 University.
- (ii) The grant of permission for increase of the intake capacity should have been by the Government and not by Rule 2, and-
- (iii) It will be difficult for the Rule 1 University to make arrangements for examination of 60 additional examinees within the short time available upto 27-10-86.

Shri Sawant has not been able to point out any provision in order to substantiate (i) or (ii).

It is true that there will be some difficulty for R. 1 to make additional arrangements. There are still 60 hours available to the R. 1 make necessary arrangements. We do not think it just that trainees should suffer on account of a sort of lack of communication between Rule 1 & Rule 2. We therefore direct that the 1st respondent shall arrange for 240 candidates of the petitioner Institute to take their examinations from 27-10-86. The results of the Examination shall not be declared without orders of the Court. Petition expedited. Respondents to file

their returns within 3 weeks. Rejoinder, if any, within 1 week thereafter. Matter be listed for 24-11-86 for final hearing. Shri Sawant seeks leave to appeal to the Supreme Court, Leave refused."

8. This order came to be passed on 24-10-1986. Pursuant to the order of this Court 240 students of the petitioner institute were permitted to appear for the examination, but the results of the examination are still not declared by virtue of the said order.

9. It is true that the college of the petitioners had no right to admit students more than the permitted strength of 180. They have made an application to the Director on 22nd May, 1986 requesting to increase the number of students to be admitted to 320. But, admittedly, even the Director had not issued any letter authorising the petitioners to admit students more than the permitted strength when the students were admitted. They should not have admitted students more than 180 anticipating that the Director may permit the increased number of strength. There was no basis for believing such a thing. But, even though the action of the petitioners is illegal and is baseless, the fact remains that the college of the petitioners had admitted more than 180 students. Not only that, at this stage a fact will have to be taken into account that all these 240 students were permitted to appear at the examination by virtue of the orders of this Court and they cannot be denied the fruits of the result of the examination. There is no reason as to why the results of the students who have appeared at the examination should continue to be withheld. It is necessary in the interest of justice to declare the results of the students who had appeared at the examination held from 27-10-1986. Withholding of the results will not meet the ends of justice. On the contrary, it will effect the career of the students. We, therefore, feel that the University should declare the results of 240 students within a period of eight days. In view of this, it is not necessary to pass further order in Civil Application No. 533/1987 as in the said application filed on behalf of the students the relief which was sought was for the declaration of results which was withheld by virtue of the orders of this Court.

10. The important point which was agitated before us is whether the Director of Technical Education, respondent No. 2, has any authority to increase or decrease the number of strength of the students permitted to an institution at the time of grant of affiliation u/s 43 of the Marathwada University Act. Shri Bora, learned Counsel for the petitioners, has placed reliance on the Government Resolution dated the 21st of May, 1983 (Annexure A). By this resolution the Government has declared its policy to grant permission to run non-Government Technical and Technological colleges and Polytechnics on non-grant basis with a view to fulfil the increased demand for technical personnel from industries which cannot be fulfilled with the existing Governmental facilities. In the said resolution the Government has enunciated certain principles on which the permission to run colleges in Technical and Technological field and Polytechnics on nongrant basis is given. The relevant principles enunciated therein on the basis of which the

Government wants to conduct colleges and grant permission to run colleges and institutions on non-grant basis are as follows :

"1. Rules and regulations for the regular admissions shall be the same as announced every year by the Director of Technical Education with the approval of the Government of Maharashtra and there shall be no difference between rules and regulations of these Institutions and the other existing Institutes.

2. Building requirement for each course shall be as per plans approved by the Director of Technical Education in conformity with the requirement laid down by All India Council for Technical Education or the affiliating body.

3. Equipment shall be as per requirement of All India Council for Technical Education or the affiliating body.

4. Management must produce the documents to the Director of Technical Education stating the availability of land (at least 20 acres) and Rs. 30 lakhs with the bank for the Technical College. Management must produce the documents to the Director of Technical Education stating the availability of land (at least 20 acres of land) and Rs. 20 lakhs with the bank for the Polytechnic. The Director must be satisfied that the site suggested by the Management, the Institution can function as per requirement of rules and regulations. The cash shall be deposited in both the above cases with the bank in the joint account of management and the Director of Technical Education and shall not be unilaterally withdrawn by any person of the management without the concurrence of Government of Maharashtra.

5. While at the beginning conventional courses may be accepted in such institutions, it should be ensured that in future provision can be made for courses in degree and diploma in emerging technologies :

6. The institutions shall be established by a society, established and registered for this purpose and the rules and regulations and requirements as laid down from time to time regarding admissions, Governing body, staff selection, running and maintenance of institution and audit by Director of Technical Education's office will have to be followed.

7. Institute will be permitted to charge higher fees as may be decided by the Government of Maharashtra and permitted by the Director of Technical Education for different courses at different levels i.e. for Technical Colleges and Polytechnics.

8. Subject to eligibility, conditions of affiliating bodies, 10% of annual intake of the admissions in each institution is set aside for the management at its discretion.

9. There shall be no transfer of students or staff from such Institutions to the existing institutions on any ground at any stage. A student desirous of transfer from an Institution getting grant-in-aid to an institution getting no grant from Government may, however, be permitted.

10. As far as possible, the hostel accommodation for the girls will have to be provided by the Management and efforts should be made to provide the hostel accommodation for their students.

11. Claim for grant-in-aid for non-recurring and recurring expenditure shall not be permitted by Government at any stage at any time.

12. The Society shall pass a resolution in their General Body Meeting stating that all the above conditions are acceptable to the Society and such a resolution shall be signed by the President/Chairman of the Society and the Presiding Officer of the meeting and the Secretary of the society and must be attested by two witnesses."

11. The important provision, so far as the present point is concerned, is enunciated as principle No. 6. The principle No. 6 relates to the admissions, governing body, staff selection, running and maintenance of the institution and audit by Director of Technical Education's office, etc. According to Shri Bora the power to regulate and supervise the non-grant basis colleges and institutions is vested with the Director of Technical Education by virtue of this resolution of 21st May, 1983. Shri Bora further contends that this resolution empowers the Director to consider the applications of such institutions for increase and decrease of number of students to be admitted in a particular academic year. Therefore permission granted by the Director of Technical Education on 1-10-1986 to the institution of the petitioners for admitting 85 additional students other than the permitted strength, which was authorised at the time of grant of affiliation, is legal and proper.

12. It is difficult to accept the contention of Shri Bora for several reasons. Admittedly, the College run by the petitioners for Engineering Degree Course is affiliated to Marathwada University. Thus, the petitioners are bound by the provisions of Marathwada University Act of 1974. Section 43 of the Marathwada University Act relates to affiliation and recognition of the colleges. Sub-section 4-A(a) reads as under :---

"Notwithstanding anything contained in the preceding sub-sections or any other provision of this Act and the Statutes, Ordinances, Regulations and Rules made thereunder any person, institution or association may make an application accompanied by such fees, if any, as may be prescribed in that behalf under the Statutes, Ordinances, Regulations or Rules made under this Act for opening of a new college to the Registrar of the University on or before the 30th November in any year and endorse the copy of the of the said application and send it by registered post to the State Government."

13. Thus, any application for affiliation to Marathwada University has initially to be made to the University alone before 30th of November and one copy of such application is to be sent to the State Government. The provisions of sub-section 4-A(a) enables the institutions and colleges to make an application to the University and not to the State Government directly. Admittedly, therefore, in

accordance with the provisions of this section, the application which is required to be forwarded is the copy of application made to the University. Not only that, but a detailed procedure is prescribed by the provision of section 43 for consideration of such an application for grant of affiliation to the University. The Government comes into picture on recommendation or non-recommendation of such application for approval by the University. Any such approval is also required to be sent by the University to the Government together with all proceedings for deciding to grant or reject the application in part or in whole. Sub-section (7) of section 43 authorises Government to grant such application and also to specify the courses of instruction in respect of which the college is to be affiliated, the maximum number of students to be admitted to each such course and the period for which the affiliation is granted. By virtue of sub-section (7) of section 43 the Government is empowered to consider the application made for affiliation before 30th of November and on such application the Government may grant the affiliation regarding courses, etc. and may also specify maximum number of students to be admitted to each such course. Therefore, in view of the provisions of sub-section (7) of section 43, it is very clear that the Government has authority to consider the applications for affiliation of institutions or colleges and while considering such applications to specify the courses of instructions and also the maximum number of students to be admitted for the year in which affiliation is granted. We are unable to read any power in the Government under the provisions of sub-section (7) of section 43 enabling the Government to consider any other application which is not routed through University. It is also very clear that the Government cannot consider the application thereafter made directly for the increase in the number of the strength of the students to be admitted in subsequent years.

14. Having regard to the provisions and the scheme of Marathwada University Act, it is very clear that the academics is entirely within the sphere of the University-the control and supervision over the institutions is also within the domain of the University. It is not necessary to mention the various provisions incorporated in Marathwada University Act, 1974 to establish this proposition.

But, some of the provisions will be helpful to understand that it is the authorities of the University who have got control over the maximum number of students to be admitted by college subsequent to the year of affiliation. Section 24 of the Act enumerates the powers and duties of the Executive Council and Clause (xxvii) of section 24 provides that the Executive Council can exercise power regarding supervision and control of the admission, conduct and discipline of the students, etc. It is thus clear that the issue of admission of students in a particular year is within the jurisdiction of the Executive Council of the Marathwada University as the power to control the admission is vested by virtue of this provisions in the Executive Council. Fixing the maximum strength is merely incident of this power.

15. It is also pertinent to note that there is a provision u/s 44 of the Act regarding extension and continuation of affiliation wherein it is provided that

where a college desires to add to the courses of instruction in respect of which it is affiliated, or to continue the affiliation, the procedure prescribed in the last preceding section shall so far as may be, followed. Thus, if the Government exercises power under sub-section (7) of section 43 and prescribes the courses for affiliation, any addition to such courses of affiliation can be done by the University authorities as provided u/s 44 of the Act and addition of courses admittedly envisages admission of additional students also-without that addition of courses would many times be meaningless. The provisions of section 44 also illustrates the fact that once the affiliation is granted by the State Government under sub-section (7) of section 43, any addition to the courses is left to the discretion of the University which also contemplates the control of the University over the admission of students by the institutions.

16. It is necessary to refer to one more section, namely, section 49 of the Marathwada University Act. Section 49(I) reads as follows :

"49(I) The rights conferred on a College by affiliation may be withdrawn, in part or in whole, or modified, if the College has failed to carry out any of the provisions of sub-section (3) of section 43, or to observe any of the conditions of its affiliation, or is conducted in a manner prejudicial to the interests of the University or its standards."

Sub-section (2) of section 49 enables the Executive Council to exercise the power of withdrawal or modification granted in sub-section (1) of section 49 by a motion in the meeting. The provisions of section 49 throw light on the power of the Executive Council. It is the Executive Council, i.e. the authority of the University, which is vested with the power to look after whether the college is following the conditions of its affiliation and if the college is not following the conditions of affiliation then the power to modify or withdraw affiliation is vested with the authorities of the University, namely, the Executive Council. According to us, specifying maximum number of students at the time of granting affiliation by the State Government under sub-section (7) of section 43 can be deemed to be a condition of affiliation because if the institution which is granted a maximum number of the strength of the students admits students in excess of the permitted strength , naturally a breach of the condition of affiliation is committed by the said institution. These questions are left for the consideration of the, authorities of the University. We are, therefore, of the opinion that it is the authorities of the University alone who have got power to prescribe the maximum number of students to be admitted subsequent to the year of the affiliation. Admittedly, in the present case, no application for permission to admit excess students was made by the petitioner society or its college to the University. The application was made to the Director of Technical Education. In our opinion, the Director of Technical Education has no power or authority to grant permission to alter the strength of maximum number of students to be admitted by any such institution which is affiliated to Marathwada University.

17. Learned Counsel Shri Bora has pointed out to us that previously also it is the

Director of Technical Education alone to whom the technical institutions and colleges have made applications in view of the Government Resolution dated 21st May, 1983 and by virtue of the powers conferred on the Director of Technical Education by the said resolution the Director of Technical Education had granted permission to admit more students than the permitted strength. As we have already stated that the power to regulate the admission of students is vested with University by the Marathwada University Act. The Government Resolution cannot have any overriding effect over the provisions of Marathwada University Act. Therefore, the Director of Technical Education, respondent No. 2, cannot get powers by virtue of Government resolution, contrary to the provisions of Marathwada University Act. In the result, the petition is partly allowed. We direct the Marathwada University, respondent No. 1, to declare the results off the students who have appeared for the examination by virtue of the order of this Court dated 24-10-1986 within a period of 8 days.

18. We also restrain the petitioners from admitting more students than the authorised strength for the academic year of 1987-88. In the result, petition is partly allowed. Rule is made absolute accordingly. No order as to costs.

Civil Application No. 533 of 1987 is disposed of. No order as to costs in the civil application.

We have dictated the judgment yesterday. Today it is represented to us by the learned Counsel appearing for the students that the next examination is scheduled from 13th of April, 1987 and already the last date for acceptance of the examination forms and fees is over. If the declaration of results by the University takes longer time it may not be possible for the students to appear for the ensuing examination. We asked from Shri Binwade, who appears for the University as to within how many days it is possible for the University to declare the results. We are informed that it is possible for the University to declare the results within a week. We, therefore, direct that the results shall be declared by the University on or before 31st of March, 1987. After the declaration of results the University should accept the examination forms and fees of such of the students who desire to appear for the examination scheduled from 13th of April, 1987, till 6th, April, 1987.