

(2007) 08 BOM CK 0126

In the Bombay High Court

Case No : Writ Petition No's. 3423 and 3425 of 2007

Guru Nanak Educational Society and Guru Nanak Institute of
Engineering and Technology

APPELLANT

Vs

The State of Maharashtra and Rashtrasant Tukdoji Maharaj,
Nagpur University
 Satchikitsa Prasarak Mandal and Dr.
Bhausahab Nandurkar College of Engineering Vs The State of
Maharashtra and Sant Gadge Baba, Amravati University

RESPONDENT

Date of Decision : 31-08-2007

Acts Referred:

Maharashtra Universities Act, 1994 — Section 82, 83

Citation : (2008) 3 BomCR 374 : (2007) 109 BOMLR 2011 : (2007) 6 MhLj 355

Hon'ble Judges : R.C. Chavan, J;A.H. Joshi, J

Bench : Division Bench

Advocate : Sunil V. Manohar and A.A. Naik, for the Appellant; N.W. Sambre, Government Pleader and B.H. Dangre, Additional Government Pleader for Respondents Nos. 1 and 2, B.G. Kulkarni, in Writ Petitions Nos. 3423 and 3424 of 2007 and Gulhane, holding for V.A. Kothale, in Writ Petition No. 3425 of 2007, for the Respondent

Judgement

R.C. Chavan, J.—Rule. Rule is made returnable forthwith by consent of the learned Advocates for the parties.

2. These petitions raising a common question about admission to professional Colleges, which receive approval from All India Council for Technical Education (for short, AICTE) after the commencement of Combined Admission Process (for short, CAP.), are being disposed of by this common judgment.

3. The admission process for Engineering and Technology Streams commenced by issuance of admission brochure in June-July 2007. The brochure contains a stipulation in Clause 2.6.4 that as per AICTE approval received on or before 30-6-2007, final sanctioned intake for all the courses of all the institutes coming under CAP will be displayed on the website of the department. The admission notification was itself issued on 9-7-2007 and the last round of admissions, that

is CAP Round-IV, was concluded on 19-8-2007. Candidates were to report to respective institutions by 21-8-2007 and the cut-off date for all admissions to Engineering and Technology Courses is 31-8-2007, that is today.

4. The petitioner in Writ Petition No. 3423 of 2007. Guru Nanak Educational Society had applied for starting a new Engineering College on 30-10-2006 by paying requisite fees to the Nagpur University. The proposal was then forwarded to AICTE, Western Regional Office, Mumbai, on 28-12-2007, along with requisite fees. On 13-3-2007, the Joint Director of Technical Education, Nagpur, asked the petitioner to deposit the inspection fees, which were accordingly deposited. On 28-3-2007, the petitioner was required to attend a hearing with the Director of Technical Education, Mumbai, and on 18-4-2007, a hearing was held by the AICTE. On 25-5-2007, the AICTE issued a letter of intent to the petitioner, whereby the petitioner was asked to make a joint fixed deposit of Rs. 35 lacs as indicated in the latter, which was complied by the petitioner by communication dated 7-6-2007. The petitioner was requesting AICTE to conduct inspection before 30-6-2007, but the inspection was conducted only on 6-7-2007. On 31-7-2007, the petitioner received a letter of approval from AICTE, copies whereof were also forwarded to the Secretary to Government of Maharashtra. By this letter, the petitioner was permitted to start an Engineering College having four Courses with intake capacity of 60 each, that is in all 240 seats. The petitioner immediately applied to the Government of Maharashtra for permission to start the College from Academic Year 2007-2008. However, since no action was taken by the State, the petitioner approached this Court by filing this petition on 6-8-02007 seeking a direction to the respondents to permit the petitioner to start the College and to fill in 240 seats, which were made available to the petitioner- College, along with other ancillary reliefs.

5. The facts in the other two petitions, bearing Writ Petition No. 3424 of 2007 by Vidarbha Bahu Uddeshiya Shikshan Sanstha, and Writ Petition No. 3425 of 2007 by Satchikitsa Prasarak Mandal are almost similar, the only differences being that petitioners in Writ Petition No. 3425 of 2007 want to start a College at Yavatmal under the jurisdiction of Amravati University and that it had received letter of intent and final approval from AICTE on 2-4-2007 and 24-7-2007 respectively.

6. The AICTE granted approval to the petitioners on, among others, condition No. 2(c), which reads as under:

That the admissions to the courses shall be made only after the affiliating University/State Board has given permission to start the course.

7. After the petitions were filed, the respondent. Government of Maharashtra forwarded to the learned Government Pleader copies of letters dated 21-8-2007 written to the petitioners, whereby the Government signified that it had no objection to the concerned University to process the request, if any, made by the Institution for grant of affiliation. The letters read as under:

1. The State Government hereby gives no objection to the concerned University

to process the request if any made by your Institution for grant of affiliation by the concerned University to your Institution in respect of starting Engineering courses for the first time.

2. However, it is made hereby clear that this No Objection cannot be construed to be a permission granted to your Institution for admitting students during the current A.Y. 2007-08 for the Engineering courses for which an approval has been granted to your Institution by AICTE. This is specifically to put on record that the State Government at this stage is refusing permission to your Institution to admit even a single student at the newly opened Engineering college inter alia for following reasons:

(i) Admissions cannot be effected without obtaining prior affiliation from the concerned University.

(ii) Admissions cannot be granted after the last counseling round of concerned admissions, which in the present case, has been conducted on 18th/19th August, 2007.

(iii) Other reasons as set out in the Affidavit filed in the proceedings pending before the Hon"ble High Court at Nagpur.

8. Section 82 of the Maharashtra Universities Act, 1994 requires the universities to scrutinize applications received for starting new Institutions and to recommend to the State Government the Institutions, which deserve grant of permission. The State Government, in turn, is expected to communicate to the universities on or before 15th July each year, the permission to start a new College. The Section further provides that the permission received thereafter shall be given effect to by the universities only in the subsequent Academic Year. Thereafter, the universities are expected to follow the procedure for affiliation prescribed in Section 83 of the said Act and grant affiliation to the concerned Colleges.

9. After the communication of "No Objection" by the Government of Maharashtra, we have been informed that respondent No. 3 University has granted affiliation to Colleges run by the petitioners in Writ Petition No. 3423 and 3424 of 2007 by separate letters dated 27-8-2007. Likewise respondent No. 3 has granted affiliation to the petitioner-College in Writ Petition No. 3425 of 2007, by letter dated 24-8-2007.

10. The respondent-State has opposed the prayers in the petitions by filing affidavits-in-reply dated 20-8-2007 and 30-8-2007. By these replies, the respondent-State contends that the admission process to the Engineering Courses closed on 19-8-2007 and no admissions can be effected after that date. According to the respondent-State, since approval granted by the AICTE was subject to the condition that the admissions to the course shall be made only after the affiliating university/State Board has given permission to start the course, and since no such affiliation had been secured by the petitioners before

filing the petitions, they were not entitled to start the course or admit students, and that the petitioners' claim to start the course or admit students could be considered only from Academic Year 2008-2009. According to the respondent-State, adding the petitioner-Colleges to the Institutions where students could seek admissions at this late stage, would result in injustice to the students, who have been already admitted, since they would not have the chance for opting for the petitioner-Colleges and such admissions would be contrary to the golden rule of "Merit-cum-Choice". The respondent-State reminded the Court that it would not be permissible for this Court to pass any orders in breach of "Merit-cum-Choice" rule. The respondent-State distinguished the cases of Colleges in whose favour interim relief had been granted by Aurangabad Bench of this Court permitting those Colleges to admit students, by pointing out that those Colleges were already approved and affiliated and there was only an increase in the intake. The respondent-State, therefore, prayed for dismissal of the petitions.

11. We have heard the learned Advocates for the respective parties.

12. The learned Advocate for the petitioners submitted that the petitioners have incurred huge expenditure in creating infrastructure and appointing staff, which are pre-requisites for grant of approval for starting an Engineering Course. This is apart from joint fixed deposits of Rs. 35 lacs made by each of them, as required by the AICTE. Further there are number of students who have not been able to secure admissions at the end of CAP. He, therefore, wondered as to what interest would be served by forcing the petitioners to keep the infrastructure, created at a heavy cost, and teaching and other staff employed by it idle for one year and at the same time, to deprive the students of opportunity to pursue course of their choice who could not get admission for want of seats. He submitted that once the AICTE, being the apex body concerned with regulation of technical education, grants approval, permission from the State Government and affiliation of university must follow as a corollary and these authorities cannot have an option to take a different view of the matter.

13. The learned Government Pleader submitted that ordinarily when the AICTE grants approval, the State Government or the universities may not have much role to play in re-evaluating the eligibility of the petitioners to start the Colleges. He, however, submitted that when Sections 82 and 83 of the Maharashtra Universities Act stipulate grant of permission by the State, or affiliation by the university, after following a procedure, it would not be permissible to wish away the existence of these safeguards and to hold that such permission or affiliation is an empty formality. He submitted that instances have been known where though the AICTE had granted permission, it was revealed that the Institutions concerned did not have the requisite infrastructure to start a College. This was revealed only during the processing of applications for grant of permission by the State and affiliation by the university. In any case, he submitted that in the instant case, the AICTE itself had stipulated in Clause 2(c) of the conditions of approval that the admissions to course shall be made only after the affiliating

university/State Board has given permission to start the course, indicating that these authorities also must perform their statutory duty of ensuring that the Institution has the requisite infrastructure.

14. We have carefully considered the submissions on these points. There can be no doubt that though the AICTE, as the apex body, must have the last word in the matter of opening a College imparting technical education, it does not ipso facto result in diluting the statutory requirements of permission from the State or affiliation by the university. Even in the absence of stipulation No. 2(c) in the letter of approval granted by the AICTE, the State or the university could not have been prevented from performing their statutory duties under Sections 82 and 83 of the Maharashtra Universities Act. The only limitation on performance of such duties would be that these authorities would take into consideration the approval granted by the AICTE on the basis of proposals processed through them in the past, and would not unreasonably delay consideration of grant of permission or affiliation.

15. In these petitions, the State has not been able to show that it had any serious objection to grant of permission u/s 82 of the Maharashtra Universities Act. It has not been able to point out any deficiency, which would disentitle the petitioners to the permission from the State. As far as the universities are concerned, as we have already observed that necessary affiliation has already been granted. Therefore, we see no force in the argument of the learned Government Pleader that in spite of grant of permission by the AICTE the petitioner-Institutions could have been denied permission to start the courses from the current Academic Year.

16. There can be no doubt that Section 82 of the Maharashtra Universities Act prescribes that permission from the State Government should be communicated to the university on or before 15th July of the year and permission received thereafter should be given effect to only in the subsequent Academic Year. However, the sanctity of the date is important only in order to ensure a uniform calender of Academic Sessions. This is so because it guarantees that the students undergo the prescribed minimum number of days of classes during the Academic Year. This aspect as well as the observations of the Apex Court in Medical Council of India Vs. Madhu Singh and Others, , where the Apex Court had underlined the importance of adhering to academic calender, were duly considered by the Division Bench of this Court sitting at Mumbai in Writ Petition No. 5986 of 2005, on which the learned Advocate for the petitioners placed reliance. This judgment has been followed up by subsequent Division Benches, including in Writ Petition No. 4133 of 2006 decided on 11-8-2006 at Nagpur. After considering all aspects of the matter, in para 10 of the judgment in Writ Petition No. 5986 of 2006 Yerala Medical Trust & Research Centre and another v. The State of Maharashtra and Ors., the Division Bench observed as under:

10. In the light of that, the Petition can be disposed of by issuing the following directions:

- i) The State Government will consider the intake capacity as on 30th June, 2005 to commence the process for filling in seats subject to what is set out hereunder;
- ii) If before the last date of the admission/counseling process, AICTE increases the intake of existing institutions or grants permission for new colleges, the State Government will take into consideration such additional seats and take steps to fill in these seats from amongst students already on their list and without interfering with the admission already completed;
- iii) This would, however, be subject to condition that such institutions must have affiliation in terms directed by Respondent No. 3 and the institutional students are in a position to complete the necessary number of days for appearing for the examination in terms fixed by Respondent No. 3 as followed by respondent No. 6.
- iv) It is made clear that those who have already been admitted before the increased intake or approval by Respondent No. 3 by granting approval of new institutions or additional intake will not be entitled to apply nor will the State consider their applications for admission in the new college where approval has been granted or intake increased.

17. The learned Advocate for the petitioners was, therefore, right in submitting that if the AICTE grants permission to new College before the last date of admission, the State Government was obliged to take into consideration the additional seats and to take steps to fill those seats. The learned Government Pleader could not explain as to why the State felt itself not bound by these directions consistently given in the judgments referred to above. The learned Government Pleader relied on direction No. (iii) in the Division Bench judgment to support his contention that in the absence of permission/affiliation, State could not have been expected to follow direction No. (ii). We have already considered the nature of scrutiny by State/universities while granting permission/affiliation, in preceding paragraphs. In view of the limited role of the State Government and universities, we see no force in this contention.

18. In these petitions, the AICTE had issued a letter of intent before 25-5-2007. The approval was finally granted by the AICTE on 31-7-2007. At that time, only the first round of admission process was over. The second round had begun on 29-7-2007 and the provisional allotment list was to be displayed on 4-8-2007, as may be seen from Annexure-K in Writ Petition No. 3423 of 2007, which is copy of admission notification issued by the Director of Technical Education on 25-6-2007. Considering the reduced responsibility of the State in scrutiny of applications for permission from the petitioner-Institutions after they had secured AICTE approval, it would have been reasonable to expect the State to either grant permission within a few days, or to punctually indicate its reasons for refusal of permission. All the petitioners had applied to the respondent-State on 1-8-2007 itself seeking the necessary permission. It is not clear as to what prevented the Government from taking the decision and communicating immediately the "No Objection", which had been eventually conveyed during the

pendency of the petitions on 21-8-2007, after the last round of the admission process was over. The allegation of the petitioners that in this delay, there is something more than what meets the eyes could have been avoided by communicating the permission promptly well before the fourth round of admission process was over.

19. The apprehensions of the respondent-State in its two affidavits that the admission process would have to be re-opened now and that restricting the admissions to the left-over would do harm to the golden rule of "Merit-cum-Choice" have already been considered in the judgments of the Division Benches in Writ Petitions No. 5986 of 2005 and 4133 of 2006, which have been referred to above. In these judgments, it was directed that the additional seats available would have to be filled in from the students already on the list without interfering with the admission process already completed and those who were already admitted before the approval to the new Colleges, will not be entitled to apply and the State was, therefore, not to consider applications of such candidates for admissions to new Colleges. Therefore, the respondent-State has now to restrict the admission process to the students, who are on the list, but have not been accommodated in the admission process, which came to an end on 19-8-2007. Hence, a further discussion to deal with the objection of the State is unnecessary. We may still observe that if the State was really serious about strictly adhering to the golden rule of Merit-cum-Choice., it should have abided by the directions of this Court in the two judgments of this Court referred to above and should have taken steps to comply with those directions, since AICTE approvals to the petitioner-Institutions had been received and were duly within the knowledge of the respondents before the last date of the admission process.

20. A Division Bench of this Court at Aurangabad, in Writ Petition No. 4638 of 2007 has permitted admissions in the increased quota after the cut-off date by way of interim relief. The learned Government Pleader submitted that this interim relief has been granted in respect of increased intake capacity in Colleges already affiliated and working and, therefore, the same analogy would not apply to the petitioner-Institutions, since they are new Colleges, which are yet to get permission from the Government and affiliation from the university. First, the direction No. (ii) of the Division Benches in Writ Petitions No. 5986 of 2005 and 4133 of 2006, referred to above, makes no distinction between the Institutions where intake capacity was increased by the AICTE and new Institutions, which were granted approval. Secondly, the objection to admissions in a newly established Institutions could have been validly taken had these Institutions been denied affiliation by the universities concerned. The petitioners in these petitions have been granted affiliation by their respective universities. In view of this, we see no reason as to why the students should be deprived of the additional seats which would be available when the three petitioners start their Colleges in this Academic Year.

21. The order passed by this Court on 1-8-2007 in Writ Petition No. 1624 of 2007

Deccan Education Society v. State of Maharashtra and Ors. has also been made available for our perusal, it being short, we would reproduce it as under:

Learned Counsel appearing for the University submits that they would consider the application of the petitioner for affiliation as per the Rules as expeditiously as possible. Learned Counsel for AICTE submits that once an affiliation is granted by the University they would have hardly any objection to get fresh permission for commencement of the academic course. The State Government, if involved as a result of common admission process, would also take appropriate steps at the earliest.

2. In view of the statements made by the learned Counsel appearing for the respective respondents, nothing survives in this writ petition. Accordingly, we disposed of this writ petition as it does not survive. No order as to costs. Even this order would show that the State Government, if involved as a result of CAP, was responsible to take appropriate steps at the earliest. True it is, that the above quoted order was passed on 1-8-2007, and this Court took care of affiliation, permission as well as admissions. While we are disposing of these petitions on 31-8-2007, the stages of permission by the State Government and affiliation by university are already complete. It is the respondent-State, which is responsible for this loss of one month, first, in not processing the petitioners' applications for permission promptly after the AICTE approval was communicated to the respondent-State, and, secondly, even after belatedly communicating. No Objection. on 21-8-2007, continuing to attempt to stall the process of admission to the petitioner-Institutions without any justification. In view of this, we pass the following order.

22. Rule is made absolute, and respondents No. 1 and 2 are directed to initiate special round of counseling for the remainder of the list of qualified candidates who have not been admitted in the admission process which is completed on 19-8-2007, allot the students to the petitioner-Institutions, and if there be similarly situated Institutions, which have been found entitled for admitting the students This process shall commence after issuance of appropriate publication by these respondents by giving a clear seven days" notice. Publication be issued on or before 5-9-2007, and the process of counseling shall commence on 12-9-2007 and will be completed on 14-9-2007. In the circumstances, we direct the parties to bear their own costs.