

(2012) 12 BOM CK 0135
In the Bombay High Court
Case No : Writ Petition No. 10511 of 2012

Holy-Wood Academy, Kolhapur and Another	APPELLANT
Vs	
All India Council for Technical Education and Others	RESPONDENT

Date of Decision : 07-12-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Universities Act, 1994 — Section 81, 82

Citation : (2013) 1 ALLMR 514 : (2013) 2 BomCR 861

Hon'ble Judges : D.Y. Chandrachud, J;A.A. Sayed, J

Bench : Division Bench

Advocate : V.M. Thorat with Mr. Nitin Dhumal, for the Appellant; Mihir Desai with Ms. Ushajee Peri for Respondent No. 1, Ms. S.S. Bhende, AGP for Respondents 2 and 4 and Mr. Amit B. Borkar, for the Respondent

Final Decision : Dismissed

Judgement

Dr. D.Y. Chandrachud, J.—This Petition has been listed before the Court together with a batch of Petitions. Submissions on the issue of law have been heard in the lead petition (Writ Petition 10575 of 2012 - Sou. Devibai Narayandas Chhabda Rural Education Society v. Shivaji University) in which judgment has been delivered yesterday. In the present case, the First Petitioner applied to the AICTE on 20 January 2012 for extension of approval to certain existing courses and for commencing new undergraduate and postgraduate courses in engineering. The Petition relates to the affiliation sought from the University for commencing Masters in Engineering Degree Courses in the subjects of Mechanical Engineering Design and Electronics and Telecommunications respectively. After applying to the AICTE, the Petitioners submitted a proposal to the Third Respondent, Shivaji University, on 21 January 2012 for the grant of affiliation for starting new undergraduate as well as postgraduate courses. The approval of the AICTE was published on the web portal on 10 May 2012 inter alia for the commencement of postgraduate degree courses in each of the two subjects noted earlier with an intake capacity of 18 students each for academic year 2012-13. Following this

the Government of Maharashtra issued a resolution on 30 June 2012. Clause 3 of the resolution contained a requirement that the institution must obtain affiliation of the University under the Maharashtra Universities Act 1994. On 1 September 2012 the Directorate of Technical Education of the State Government granted permission subject inter alia to various conditions including the requirement of affiliation of the University. On 24 July 2012 the Petitioners submitted fees of Rs. 20,000/- to the University for yearly affiliation. On 9 August 2012 the University set up a local inspection committee for physical verification of the college and for submitting a report. In the meantime on 24 August 2012 the Deputy Vice-Chancellor in a communication addressed to the Petitioners specifically stated that no admission should be granted to any student in the absence of affiliation by the University. The report of the inspection committee found that it was necessary for the college to (i) appoint duly approved teaching faculty for the postgraduate courses; (ii) enhance the available stock of books for the postgraduate courses and (iii) purchase the required equipment for conducting the postgraduate courses. The inspection committee noted that there was a deficiency in the faculty of conducting the postgraduate courses as well as in regard to the availability of equipment. As regards the undergraduate courses, the inspection committee had, however, observed that the required infrastructure had been provided. The academic council by its decision of 11 October 2012 accepted the report of the inspection committee as regards the undergraduate courses, but rejected the recommendation of the committee for the grant of affiliation for a period of one year for the postgraduate degree course. Aggrieved the Petitioners have challenged the decision of the academic council. The Petitioners have sought a direction to the University to grant its affiliation and to set aside the resolution of the academic council dated 11 October 2012. In the judgment which has been delivered by this Court yesterday in the lead Petition, this Court has considered the jurisdiction and position of an affiliating university under State legislation more particularly u/s 81 of the Maharashtra Universities Act 1994 and the relationship which it bears to the exercise of powers by the AICTE under the All India Council for Technical Education Act 1987. After adverting to the judgment of the Supreme Court in *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, , this Court has noted that the operation of the Maharashtra Universities Act 1994 in the matter of granting affiliation continues to hold the field upon the grant of permission by the AICTE for the establishment of a technical institution subject to the condition that the norms which the affiliating university observes cannot be at variance with the regulations and guidelines prescribed by the AICTE. This indeed is the position which has been categorically affirmed by the judgment of the Supreme Court in the decision in *Adhiyaman Educational & Research Institute (supra)* where the Court has observed as follows :

The provisions of the University Act regarding affiliation of technical colleges like the engineering colleges and the conditions for grant and continuation of such affiliation by the University shall, however, remain operative but the conditions

that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it u/s 10 of the Central Act.

2. In the judgment in the main matter this Court has also duly considered the judgment of the Supreme Court in *State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shashtra Mahavidyalaya and Others*, which construed the provisions of the National Council for Teachers Education Act 1993. In that judgment, the Supreme Court held that once the NCTE had granted recognition under the provisions of central legislation, it would not be open to the State Government, acting in exercise of powers conferred by Section 82 of the Maharashtra Universities Act 1994 to decline its NOC for the establishment of a college on the basis of a policy decision. The grant of affiliation, however, is a power which the University as an examining body exercises and is legitimately entitled to exercise since the affiliation of the University is sought for the conferment of degrees by the University concerned. As a matter of fact, the submissions which have been urged by the AICTE before this Court also accord with the position in law as stated herein above. The AICTE while assisting the Court in the resolution of the present batch of cases has also urged that (i) Upon the grant of permission by the AICTE to a technical institution for the commencement of a new course, the University acting under the Maharashtra Universities Act 1994 is not denuded of its power to grant affiliation nor is it required to grant affiliation as a matter of course without due application of mind to the norms and guidelines which are prescribed by the AICTE; (ii) In areas which are covered by the regulations and guidelines prescribed by the AICTE, the University cannot lay down norms at variance with regulations which are prescribed by the AICTE. Finally, counsel appearing on behalf of the AICTE has joined in expressing concern about the grant of admissions by educational institutions without the affiliation of the University and has urged that such a procedure would be unlawful. For the reasons which we have more specifically enunciated in our judgment in the companion case noted earlier, we have come to the conclusion that the grant of admission to students without the affiliation of the University is unlawful and cannot be countenanced. In the recent judgment of the Supreme Court in *Adarsh Shiksha Mahavidyalaya and Others Vs. Subhash Rahangdale and Others*, , the Supreme Court has expressed its disapproval of the grant of admissions and more particularly of the exercise of the power under Article 226 to pass interim orders protecting such admissions or granting permission to such students to appear at the examinations. In the present case, it has been urged on behalf of the Petitioners that once the University grants affiliation, it will relate back to the academic year and that consequently the Petitioner was led to believe particularly on the basis of the judgment in *Sant Dnyaneshwar* that it was entitled to grant admissions without waiting for affiliation. As we have noted in the judgment in the main matter, the judgment of the Supreme Court in *Sant Dnyaneshwar* did not deal with the issue of affiliation u/s 81 of the Maharashtra Universities Act 1994 since the issue which fell for consideration was whether it

was open to the State Government to decline its permission or NOC u/s 82 despite the grant of recognition by the NCTE acting under central legislation. We are affirmatively of the view that the position of the Universities constituted under the Maharashtra Universities Act 1994 in the matter of grant of affiliation cannot be allowed to be diluted by educational institutions proceeding to grant admissions to students even in the absence of affiliation. The passing of orders interim or otherwise by the Court under Article 226 to protect such institutions would only encourage lawlessness besides undermining the authority of the statutorily constituted academic institutions and bodies such as the Universities. The AICTE as noted earlier has also expressed its concern over the state of affairs in which admissions are granted without the affiliation of the University concerned.

3. On behalf of the Petitioners it has been urged that in the present case what the inspection committee had found was only a suggestion and did not constitute a finding. That is not how we read the recommendations of the committee in the present case which have been extracted in extenso in the resolution passed by academic council. According to the Petitioners they do have a complement of the required faculty and the necessary equipment. This in our view is a matter which has to be assessed by the University and is certainly not an issue on which the Court can substitute its own finding for that which has been arrived at by the academic authority unless it is shown that the finding is perverse or one which no reasonable body of persons could have arrived at. Counsel appearing on behalf of the University has submitted that it is necessary for the University to carefully scrutinize as to whether the staff which has been appointed by the college in the present case has been appointed to fulfill the needs of the undergraduate programme or whether, independently, the required complement of faculty is available to meet the requirements of the postgraduate degree programme in the two subjects for which an application has been made. On the state of the record as it stands we are unable to come to the conclusion that the view which was taken by the University is perverse or that it is contrary to law. We, however, record the assurance which has been furnished by counsel appearing on behalf of the University that the University shall set up a local inspection team to verify compliance by the college with the requirements for affiliation and, if it is found that the college does in fact meet the requirements for conducting the postgraduate degree courses in the two subjects for which an application has been made, a decision shall be taken thereon in accordance with law after due application of mind by the academic council. This exercise of appointing a local inspection committee should be carried out expeditiously and the committee should be directed to visit the college within a period of two weeks from the receipt of an authenticated copy of this order. Counsel appearing on behalf of the Petitioners has sought a direction of the Court for allowing the students who have been admitted by the Petitioners for the postgraduate courses for which affiliation has been refused to appear at the ensuing examinations. As we have noted earlier, this very course of action has been the subject matter of a

severe disapproval by the Supreme Court including in the recent judgment in Adarsh Shiksha Mahavidyalaya (supra) which has relied upon the earlier judgment of the Supreme Court. No such relief in our view can legitimately be granted. The Petitioners have taken the law in their own hands by granting admissions without affiliation. For these reasons, there is no merit in the Petition which is accordingly dismissed.