

(2017) 08 BOM CK 0009
In the Bombay High Court
Case No : 1685 of 2017

Utsav S/o Tushar Sodha

APPELLANT

Vs

The State of Maharashtra, & Ors.

RESPONDENT

Date of Decision : 16-08-2017

Acts Referred:

Constitution of India, Article 14, Article 21, Article 21A, Article 29(2) -
Maharashtra Unaided Private Professional Educational Institutions (R

Citation : (2017) 08 BOM CK 0009

Hon'ble Judges : Anoop V. Mohta, Bharati H. Dangre

Bench : DIVISON BENCH

Advocate : S.B. Talekar, V.P. Sangvikar, Madhavi Ayyappan, Vinod Sangvikar, L.M. Acharya, Kunal Bhanage, Rui Rodrigues, Dipali Chimane, S.K. Srivastav

Judgement

1. Leave granted to correct the name of Respondent No.2 and prayer clauses. Amendment to be carried out forthwith.
2. This is a case of transfer of a student (Petitioner) from unaided institution to aided institution and not for the first time admission on merits.
3. The Petitioner has passed his first year LLB examination from Respondent No.5Pravin Gandhi College, Vile Parle (an unaided Institution/college) in this year itself and now is seeking transfer in Respondent No.4Government Law College (GLC)(The aided institution) in second year LLB Course.
4. The Petitioner has filed this Petition on 27 June 2017 and amended the same as per Court order dated 24 July 2017. The subsequent events after 24 July 2017, are not placed on record, through affidavit.
5. The constitutional challenge is raised to Rule 16(2)(c), (d) (e) and (f) of the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admission to the Full Time Professional Undergraduate Law Courses) Rules 2017,

("Rules") stated to be ultravires of Section 4 of the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admissions and Fees) Act 2015, ("The Institutions Act"). Rules 16(2) (c) to (f), read as under:

"16. Change of Institution after First year

(c) There shall be no transfer of students at any stage in any case from Unaided Institutions to Government or Government Aided, University Departments, University Managed Institutions. However, the Candidate from Government or Government Aided University Departments, University Managed Institution may seek transfer to Unaided Educational Institution;

(d) There shall be no transfer of students at any stage to Autonomous Institutions;

(e) The Principals of Unaided institutions shall consider the Candidates from other institutions for transfer with prior approval from the Directorate of Higher Education on submission of No Objection Certificate (NOC) from institution, Eligibility Certificate from University and Vacancy position. The Principal or Director shall ascertain the eligibility of Candidates as laid down by the concerned University for the course to which the Candidate is being transferred;

(f) No application without recommendation of the Principal of Institution shall be entertained by the Directorate of Higher Education ;"

6. The "unaided institution" is also defined under Section 2 (x) of Unaided Institutions Act 2015. These concepts have been otherwise settled and wellknown to the parties.

7. Heard the learned counsel appearing for the Petitioner as the insistence is to pass an interim order so prayed, in view of subsequent development also. The Petitioner's application dated 30 July 2017 for transfer to GLC, submitted to Respondent No.5 the unaided college. It is stated to be forwarded further to Respondent No.2 the Director of Higher Education and the same is still pending for further action. The apprehension is that in view of these impugned Rules, the Petitioner's case may not be considered. Therefore, the payer is made to direct the Respondents to consider the Petitioner's case positively.

8. Mr. Acharya, the special Counsel for the State refers to the two affidavits in reply filed only to oppose the interim reliefs. They resisted the interim relief, so sought. No detail reply is filed to the validity of the provisions, so raised. Therefore, we are permitting the contesting Respondents to file their detailed reply to the validity, so that at the stage of admission itself, we would dispose of this matter finally.

9. So far as the interim relief is concerned, we are not inclined to grant any relief/ prayer so made, for the following reasons- a) The Institutions Act is for regulating the admissions and fees for unaided private professional educational institutions in state of Maharashtra. The "private professional educational

institution" is specifically defined in Section 2 (q) of Unaided Institutions Act 2015, which excludes any such institution established, maintained or administered by the Central Government, any State Government or any local authority. This definition itself makes the position clear that the private professional educational institutions are different for various purposes, including for regulation of admissions and fees.

b) The admission process and related aspects are governed differently of Aided Institutions/State Government Institutions and/or of Private Institutions. The Act and the Rules in question, are provided for the regulations and admissions only of unaided private institutions. Keeping in mind the object and purpose of the Act, the classification and/or class, so created for such admissions and regulations of fees, at this stage cannot be stated to be unreasonable, unconstitutional and/or unjustifiable, or violative of Article 14 of the Constitution of India. There is such case made out also, based upon the Judgments so cited. All these Judgments are distinct and distinguishable on fact.

c) We are concerned, at this stage, the aspect of transfer of students from unaided to State or aided institution/college, so referred in Rules. The plain reading of these Rules show that it deals with the change of institution after first year. We are concerned with the Petitioner, who after passing first year from unaided institution, seeks transfer in Government College/Aided Institution. It makes the position clear that such student shall not be transferred, at any stage, and in any case, from unaided institution to Government and/or Government Aided, Managed college/Institution. There is a further provision, which according to us, cannot be stated inconsistent to the Act, whereby it is clarified that the candidates from the Government and/or Government Aided, University Departments may seek transfer to the Unaided Educational Institution. This situation is different and so also the requirement if and when occasion comes; the provision is made only for the Government/aided institution. The Petitioners is not concerned with such situation. This, on the contrary, supports the Act, as well as, the Rules to achieve the object of the Act.

d) The submission referring to various Supreme Court Judgments, revolving around Articles 14, 21A and 29(2) of the Constitution of India, at this stage, those are in our view, required to be tested in the background of the facts and the Act. The principle of Articles 14 and 21 of the Constitution of India so laid down, need no discussion and it is a settled and unacceptable position of law. The challenge to the Rules only without challenge to the Act and the power so provided to the Authority, in no way breaches any provisions of the Act.

e) The provisions of the Act/Rules are always, unless declared illegal and/or bad in law, need to be respected, by all the concerned. No case of violation of Article 21A or 29(2) of the Constitution of India is made out.

10. Prima facie, considering the scheme, as well as, the settled principle of law, revolving around Articles 14 and 21A of the Constitution of India, we see no case

is made out by the Petitioner for any interim relief so sought by whatsoever nature. The submission that the meritorious candidates need to be given preference in any Institution, whether aided and/or unaided, at any stage of career, is unacceptable referring to the Rules in question. The whole admission process and the further final list of the students in such aided and unaided colleges are different. The Act/Rules are not applicable retrospectively.

11. Therefore, taking overall view of the matter, we see no case made out by the Petitioner for any interim relief. The prayer for interim relief is, rejected. However, we are inclined to admit this Petition. Order accordingly. ORDER

- a) Rule returnable six weeks.
- b) Issue notice to the Advocate General.
- c) The Respondents State to file detailed reply within four weeks from today. The rejoinder, if any, to be filed within two weeks thereafter.
- d) Stand over to 27 September 2017, for final disposal.
- e) The parties to take appropriate steps accordingly.
- f) All interim reliefs are rejected.