

UNREPORTED**IN THE HIGH COURT OF JUDICATURE AT****BOMBAY****BENCH AT AURANGABAD .****WRIT PETITION NO.7917 OF 2014 .**

- 1) Aditya Education Trust, Beed
Registered Public Trust Bearing
No. F-8739, Beed
Through its authorized person,
Shri Subhashchandra Mitthulalji Sarda,
Age : 58 years, Occ : Business,
R/o : Kala Hanuman Thana,
Beed, Tq. & Dist. Beed
- 2) Aditya Education Trust's,
Aditya Dental College & Hospital
Talgaon Road, Beed,
Through its Superintendent,
Shri Santosh Bajrang Lahane,
Age : 34 years, Occ : Service,
R/o : Beed, Dist.- Beed ... Petitioners

Versus

- 1) The State of Maharashtra,
Through the Secretary,
Medical Education and Drugs
Department, Maharashtra State,
Mantralaya, Mumbai
- 2) The Maharashtra Universities of Health
Sciences Nashik, Dindori Road,
Nashik, Dist. Nashik,
Through its Registrar

- 3) The Secretary,
Dental Council of India,
Aiwan – E -Galib Marg,
Kotala Road, Opposite -
Mata Sundari Mahila College,
New Delhi.
- 4) Krutika Nagorao Dehsmukh,
Age : 20 years, Occ – Student,
R/o C/o N. G. Deshmukh,
Plot No. 23, Harney Layout,
Behind Priyadarshini College,
Nalwadi, Wardha, Dist. - Wardha
Pin- 442 001
- 5) Bharti Subhash Lohar,
Age- 20 years, Occ - Student,
R/o Indore Head Repairing Work,
Mondha Road, Ambajogai,
Tq.- Ambajogai, Dist. - Beed
- 6) Gaytri Umesh Sontakke,
Age : 20 years, Occ : Student,
R/o Socialist Chauk, Main Road,
Wardha, Tq. & Dist.- Wardha
- 7) Namrata Gajanan Gire,
Age: 20 years, Occ: Student,
R/o Satyanarayan Layout,
Plot No. 1 Wadgaon Road,
Yeovatmal – 445 001,
Tq. & Dist. - Yeovatmal
- 8) Manjushree Bhimrao Najan,
Age: 20 years, Occ : Student,
R/o State Bank Coloney No. 1,
Block No. 3, Shelgi Road,
Near DAV, College,

Solapur, Tq. & Dist. - Solapur

- 9) Abhaya Arun Yadhav,
Age : 20 years, Occ : Student,
R/o A -7 Sahajeevan Building,
Mahatma Phule Marg, Naigaon,
Dadar (East) Mumbai – 400 014
- 10) Mayuri Sunil Mangulkar,
Age: 20 years, Occ : Student,
R/o Sandeep Medical,
N. D. 4 Main Road, CIDCO,
Nanded, Tq. & Dist. - Nanded
- 11) Pooja Rajendra Narawade,
Age: 20 years, Occ : Student,
R/o at post Perne Phata,
Tq. Haveli, Dist – Pune ... Respondents

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Mr.V.D.Salunke, advocate for the Petitioners.
Mr.A.V.Deshmukh, Asstt. Govt. Pleader for
Respondent No.1.
Mr.K.C.Sant, advocate for the Respondent No.2
Mr.S.B.Deshpande, advocate for Respondent No.3.
Mr.S.B.Jadhav, advocate for Respondent Nos.4 to 9
and 11.
Mr.N.S.Kadam, advocate for Respondent No.10.

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**CORAM : S.V.GANGAPURWALA &
V.K.JADHAV, JJ.**

**Reserved on : 18.11.2014.
Pronounced on : 24.12.2014.**

JUDGMENT (Per S.V.Gangapurwala, J.)

1. The petitioners assail the action of

the Respondents in transferring the students vide order dated 4.3.2014 and the communication dated 4.9.2014, by virtue of which the Respondent Health University had asked eight students to remain present for conciliation after obtaining No Objection Certificate from the petitioners.

2. Mr.Salunke, learned counsel submits that as per the Rules, not more than 5% of the students of the particular batch shall be transferred from the College on any ground. The learned counsel submits that the order of transfer can be passed only within one month of the result and the students passing the examination. The learned counsel submits that initially the recognition of the petitioner institution was withdrawn. The learned counsel for the petitioners submits that vide order dated 2.9.2013 the essentiality certificate granted to the petitioner is withdrawn/cancelled and vide order dated 31.8.2013 the affiliation is withdrawn by the Vice Chancellor. The order also directed transfer of students from the petitioner Dental College to the other suitable Colleges.

The petitioners filed W.P.No.7299/2013, so also Civil Application No.12108/2013 was filed by interveners who were interested in seeking transfer. There were three applicants in C.A.No.12108/2013, wherein the counsel for the petitioners stated that they are not opposing transfer of the applicants in C.A.No.12108/2013. According to the learned counsel, said consent was limited to the applicants of C.A.No.12108/2013. According to the learned counsel, in the said Writ Petition, this Court set aside the orders cancelling the recognition and directed the Dental Council to immediately take steps for inspection. The learned counsel submits that subsequently the recognition was restored, as such now there would not be any right for allowing the authorities to transfer the Respondents without adhering to the provisions of law. The learned counsel submits that these eight students who are sought to be transferred and for whom meeting of conciliation is directed to be held vide impugned communication dated 4.9.2013, is illegal and does not stand to any reason. The results have been

declared long back. These students are the students of 2nd year, wherein there is no provision of transfer. Already 15 students are transferred which is much more than the permissible 5%. The said communication is per se illegal. The learned counsel submits that two students were transferred in February 2014. Again 13 students were transferred by order dated 16.7.2014 and while transferring these 13 students, no procedure was followed. These students did not appear for examination from the petitioner-College. The learned counsel submits that even fresh affiliation was granted on 26.6.2014. The said 15 transfers were three times more than the rule permits the number of the students to be considered for transfer. The communication dated 4.9.2014 is illegal and violative of Rules. All eight students therein are of the batch of 2012-13. Out of these eight students, three students are the regular students of petitioner-College. They appeared for the examination from the petitioner-College and they have passed the examination. The remaining five students did not complete theory and practical

from petitioner-College. They did not appear from petitioner-College, they could not have appeared for examination from other College. The learned counsel submits that transfer of eight students are mid-term transfer which is also not permissible.

3. According to the learned counsel, even transfers could not have been effectuated in March 2014 vide order dated 4.3.2014.

4. Mr.Sant, learned counsel for Respondent-University submits that this Court vide order dated 26.9.2013 in W.P.No.7299/2013 had permitted transfer of students from the petitioner institute to the other institute as per the policy of Respondent Nos.4 and 5, pursuant to which the steps are taken for transfer of the students. According to the learned counsel, lot of complaints were received of the petitioner-College. Even inspection was carried out, the reports are submitted. Considering the same, the orders are passed for conciliation to consider the case of transfer.

The learned counsel submits that even otherwise the petition is premature. No orders of transfer are passed pursuant to the communication dated 4.9.2014.

5. Mr.Jadhav, learned counsel for Respondent Nos.4 to 9 and 11 submits that these Respondents are unfortunate students. The petitioners had consented for transfer of the students and had given No Objection to transfer the students and the same is observed by this Court while delivering the judgment dated 26.9.2013 in W.P.No.7299/2013. The same has been confirmed up to the Apex Court in SLP No.32151/2013. The learned counsel further submits that the present Respondents are being discriminated amongst the equally and similarly situated students who are recently transferred. The learned counsel submits that after following due procedure of law these Respondents were admitted in the first year BDS course in the year 2012-13. However, there were lack of facilities and infrastructure as provided under the Dentists Act, 1948, the Maharashtra University of Health

Sciences Act, 1998 and other Rules and Regulations prescribed under the State and Central Government. The grievances are made by the students about inadequate facilities. The Management got annoyed because the grievances are made by the students and the students were threatened with life and also with their educational career. The students were being targeted as they had complained about lack of infrastructure, basic amenities. Even FIR is filed against daughter of the Chairman of the petitioner No.1 Trust as threat was given to the girl students by her. The complaints were made to the NGO, State authorities. Because of the complaints about the lack of infrastructure and harassment, the Inquiry Committee was constituted by the Government and the report was submitted by the said Committee. Considering the said report, the Government proposed to cancel the essentiality certificate granted in favour of petitioner-College. The learned counsel further submits that vide order dated 2.9.2013, while disposing W.P.No.7161/2013 the High Court had observed that as the essentiality certificate and

the affiliation is cancelled, nothing survives in the petition and it was further made clear that the petitioners would not be precluded from making application to any authority for consideration of their case of transfer to some other Dental College. Even vide order dated 26.9.2013, in W.P.No.7299/2013, this Court had allowed transfer of the students. The said order is confirmed by the Apex Court in SLP. According to the learned counsel, as per Government Resolution dated 4.3.2014, issued by the State of Maharashtra, the process for transferring the students from the petitioner-College who were admitted in the year 2012-13 was to begin. In view of the said Government Resolution, the petitioner-College had issued No Objection certificate dated 23.7.2014 to some of the students and these students are transferred. That today also there is lack of infrastructure. The orders passed in W.P.No.7299/2013, are still intact. The learned counsel strenuously contends that the Respondents-students have suffered a lot as their education career is being spoiled by the

petitioners and they are targeted, harassed and their character is maligned by the petitioners. These Respondents would be victimised, revengeful approach will be taken by the petitioners. The learned counsel submits that the Writ Petition be dismissed.

6. Mr.Kadam, learned counsel for Respondent No.10 also adopts the arguments of Mr.Jadhav, learned counsel.

7. We have considered the submissions canvassed by the learned counsel for respective parties.

8. It is not disputed that these Respondent Nos.4 to 11 have taken admission with the petitioner institution in the first year BDS course for the academic year 2012-13. The petitioner is granted essentiality certificate to run BDS course in the year 2002. On 31.8.2013, the affiliation/recognition of the petitioner institution was withdrawn. The Writ Petition was filed by the petitioners challenging the same

bearing W.P.No.7299/2013. The order of withdrawing affiliation/recognition is set aside, vide order dated 26.2.2013. Thereafter again on 13.12.2013, the affiliation of petitioner is withdrawn. W.P.No.1830/2014 is filed against the same. There was interim order not to transfer the students from the petitioner-College to other College on 12.3.2014 and the order of University withdrawing affiliation is set aside on 7.4.2014. Thereafter, the University granted continuation of affiliation for the academic year 2014 vide order dated 26.6.2014. There is no dispute that the petitioners have necessary recognition and affiliation on and from 26.6.2014.

9. As far as contention of the petitioner regarding transfer of students effectuated in February, March and July are concerned, we are not inclined to consider the same. The said orders are not challenged by the petitioners at appropriate time, nor in the prayer clause such specific prayers are made nor those students are parties to the present petition.

10. The order dated 4.3.2013, which is assailed in the present petition states that the transfer as per the said order dated 4.3.2014 should be effectuated within one month under any circumstances and the said order dated 4.3.2014 was at a time when the affiliation of the petitioner was withdrawn. However, now after 26.6.2014, the University has granted affiliation to the petitioner-institution. Whatever transfers are being effectuated before the impugned communication dated 4.9.2014, can not a subject matter of consideration before us for the reasons we had stated supra. However, as the affiliation has been granted back, the Respondent-University will have to abide by the Rules. We had asked the learned counsel for the University as to whether a transfer in the mid-term i.e. September/October would be permissible. The learned counsel on instructions replied that in normal course the same is not permissible. There are Rules governing transfer of students from one College to another. The parties will have to adhere to the said Rules. The transfer can not be in violation of the Rules governing

the field. Almost 15 students have already been transferred from February to July and the impugned communication only states that the students are called for conciliation after obtaining No Objection certificate. They are in fact not the orders of transfer. The University in September could not have called the students for conciliation to consider the case of transfer, of-course, the University had asked the students to bring No Objection certificate of the petitioner-institution, but it would be too late in the day for the University to consider the cases for transfer in the midst of the term. Moreover, while considering the cases of transfer, the University will have to consider the policy which would be in consonance with the Rules. This Court even while disposing the W.P.No.7299/2013 vide order dated 26.9.2013 had allowed the transfers in accordance with the policy of the University and the Dental Council of India. While considering policy, the Rules will have to be considered. The University also will have to consider that they have again granted affiliation to the petitioners on

26.6.2014.

11. The apprehension of the Respondent Nos.4 to 11 that they may be victimised by the petitioner-institution for having made grievances can be taken care of by the University, as it has a supervisory role over the working of the institutions. If at all the students feel that they are being harassed and victimised, they have every right to ventilate their grievances before the authorities concerned and the authorities can take appropriate action for redressal of their grievances as per law. We also hope and trust that the petitioner-institution being educational institution and the custodian of students career will always act fairly towards its students.

12. In view of the aforesaid facts, the impugned communication dated 4.9.2014 is quashed and set aside. The order dated 4.3.2014 now does not survive, as per the wording of the said order itself, more particularly, clause (4) of the said Government order dated 4.3.2014 which states that transfer process has to be completed

within one month.

13. This order would not be an impediment for the University or the other Respondents to exercise their right if the occasion arises in future. The Writ Petition is accordingly disposed of. No costs.

(V.K.JADHAV, J.)

(S.V.GANGAPURWALA, J.)

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