

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 4917 OF 2016**

B.P.H.E. Society's Institute of  
Management Studies  
(Career Development and Research)  
I.M.S. Campus, Station Road,  
Ahmednagar  
Through its Directorate Dr. Mehernosh Mehta

**.. PETITIONER**

**VERSUS**

1. The State of Maharashtra  
Through the Secretary for  
Higher and Technical Education  
Mantralaya, Mumbai.
2. Savitribai Phule Pune University  
Ganesh Khind Road, Pune 411 007  
Through its Director  
Board of University and College Development
3. All India Council for Technical Education  
7<sup>th</sup> Floor, Chandralok Building  
Janpath,  
New Delhi 110 001.

**.. RESPONDENTS**

Mr. V.D. Hon, instructed by Mr. A.V. Hon, advocate for petitioner.  
Mr. V.M. Kangne, AGP for the State.  
Mr. A.R. Joshi, advocate for respondent no. 2.  
Mr. S.V. Advant, advocate for respondent no. 3.

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**CORAM : R.M. BORDE &  
K. L. WADANE, JJ.  
DATE : 15<sup>th</sup> JUNE, 2016.**

**ORAL JUDGMENT : ( PER R. M. BORDE, J. )**

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel for the respective parties.
2. Petitioner is seeking quashment of the Circular No. 96/2014 issued

by respondent no. 2 Savitribai Phule University and the communicated dated 13.04.2015 issued by the Director of Board of College and University Development, instructing petitioner-management not to admit students to direct second year MCA programme conducted by the faculty of management for the year 2016-2017.

3. Petitioner contends that the institution has been accorded extension of approval by AICTE during the academic year 2013-2014 to conduct MCA course in second shift by admitting students directly to second year MCA programme. AICTE also accorded approval for conducting aforesaid course during the year 2014-2015 by granting extension of approval with admit capacity of 60 students. It is further contended that extension of approval is also accorded for the year 2015-2016 to facilitate admission of 60 students for MCA second year direct course. Petitioner, as per the requirements laid down, is required to secure affiliation from the concerned University. The University, however, has adopted a resolution based on a report of study group, not to permit admission to MCA second year direct course. The University as such, communicated petitioner-institution its decision on 13.04.2015. Copy of the resolution/circular no. 96/2014 has been transmitted to petitioner-institution wherein the decision adopted by the University has been recorded. It is the contention of petitioner that AICTE is the central body which has primacy in the academic matters and it is not permissible for the University to adopt any contrary decision.

4. Affidavit-in-reply has been presented on behalf of the University

wherein it has been stated that a Committee under the chairmanship of one Dr. Vilas Kharat was constituted by the University to study and propose the policy of conducting MCA programme under the management faculty. The study group has tendered its report and has opined that the University shall not permit direct admission for second year MCA programme. The University, it appears, has accepted the recommendations of the study group Board of Studies of Computer Science in its meeting held on 24.04.2014 and the resolution passed by the Faculty of Science in its meeting held on 28.04.2014. The University, in accordance with the aforesaid decision has issued circular and instructed the petitioner-institution not to permit direct entry of students to second year MCA course. Petitioner vehemently contends that All India Council of Technical Education Act, 1987 is enacted with an object to improve technical education system throughout the country and various authorities under the AICTE Act have been given exclusive responsibility to co-ordinate and determine the studies of higher education. It is a general power given to evaluate, harmonise and secure proper relationship to any project of national importance. Such coordinated action in higher education with proper standard is of paramount importance to national progress. Since prescription of technical education and laying down regulations for prescribing norms of study in technical education system falls within the exclusive domain of AICTE, it is not permissible for the University to take any contrary view and impose additional / contradictory restrictions. Reliance is placed on a judgment in the matter of Parshwanath Charitable Trust and others vs. All India Council for Technical Education and others.

reported in **2013(3) SCC 385** to contend that the field of operation of university is confined and limited to ascertaining the financial needs or its standards of teaching, examination and research. In paragraphs 24, 25 and 27 of the judgment, the Hon'ble Supreme Court has observed thus :

24. All these vitally important aspects go to show that the Council (AICTE) created under the AICTE Act is not intended to be an authority either superior to or to supervise and control the universities and thereby superimpose itself upon such universities merely for the reason that they are imparting teaching in technical education or programmes in any of their departments or units. A careful scanning of the provisions of the AICTE Act and the provisions of the University Grants Commission Act, 1956 in juxtaposition, will show that the role of AICTE vis—vis the universities is only advisory, recommendatory and one of providing guidance, thereby subserving the cause of maintaining appropriate standards and qualitative norms and not as an authority empowered to issue and enforce any sanctions by itself. Reference can be made to the judgments of this Court in the case of *Adarsh Shiksha Mahavidyalaya v. Subhash Rahangdale* [(2012) 2 SCC 425], *State of Tamil Nadu v. Adhiyaman Educational & Research Institute* [(1995) 4 SCC 104] and *Bharathidasan University v. All India Council for Technical Education* [(2001) 8 SCC 676].

25. From the above principles, it is clear that the AICTE has varied functions and powers under the AICTE Act. It is a specialised body constituted for the purpose of bringing uniformity in technical education all over the country and to ensure that the institutions which are recognised by the AICTE are possessed of complete infrastructure, staff and other facilities and are capable of maintaining education standards for imparting technical education.

27. The consistent view of this Court has been that where both Parliament and State Legislature have the power to legislate, the Central Act shall take precedence in the matters which are covered by such legislation and the State enactments shall

pave way for such legislations to the extent they are in conflict or repugnant. As per the established canons of law, primacy of the Central Act is undisputable which necessarily implies primacy of AICTE in the field of technical education. Statutes like the present one as well as the National Council for Teachers Education Act, 1993, the Medical Council of India Act, 1956, etc. fall within the ambit of this canon of law. The AICTE is the authority constituted under the Central Act with the responsibility of maintaining operational standards and judging the infrastructure and facilities available for imparting professional education. It shall take precedence over the opinion of the State as well as that of the University. The concerned department of the State and the affiliating university have a role to play, but it is limited in its application. They cannot lay down any guidelines or policies in conflict with the Central Statute or the standards laid down by the Central body. The State can frame its policies, but such policy again has to be in conformity with the direction issued by the Central body. Though there is no such apparent conflict in the present case, yet it needs to be clarified that grant of approval by the State and affiliation by the University for increased intake of seats or commencement of new college should not be repugnant to the conditions of approval/recommendation granted by the AICTE. These authorities have to work in tandem as all of them have the common object to ensure maintenance of proper standards of education, examination and proper infrastructure for betterment of technical educational system.

5. In the event of any conflict regarding policy or prescription of regulations by the two authorities i.e. AICTE or the State or the University, the recommendations of AICTE shall prevail. The decision of the AICTE shall take precedence over the opinion of the State or the University. It would be open for the State or the University to lay down policy however, those shall be in conformity with the policies and guidelines issued by the AICTE. In the matter of Jaya Gokul Educational Trust Vs. Commissioner.

and Secretary to Government Higher Education Department, Thiruvananthapuram reported in **2000 AIR SC 1614**, it is laid down that the State Government cannot have a policy contrary to Central Act and such policy cannot be used as a ground for setting up technical education. It is observed in the aforesaid judgment that the State cannot have any policy outside the AICTE Act and indeed if it had a policy, it should have placed the same before AICTE and that too before the later granted permission. In the aforesaid matter the question relating to grant of permission for setting up a new technical institution was a matter of consideration.

6. In the matter of State of Tamil Nadu Vs. Adhiyaman Educational and Research Institute reported in **1995(4) SCC 104** the Supreme Court has taken a view that while interpreting the provisions of AICTE Act and the University Act, if any conflict is noticed, it is not the University Act but the Central Act will prevail and to that extent the provisions of the University Act will be deemed to have become unenforceable. In the instant matter, the decision taken by the University refusing permission to direct entry of students for second year MCA programme is based on the report of the study group constituted by the University. The study group, on consideration of the syllabus prescribed for the programme and, after considering the academic issues has submitted recommendations to the University, which have been acted upon by the University. The decision taken by the University touches the academic matters which is within exclusive domain of AICTE as laid down in the matter of Parshwanath (supra). The decision taken by the University as such falls outside its ambit

and as such, the decision of AICTE shall prevail and the restriction imposed by the University will be unenforceable.

7. For the reasons set out above, writ petition deserves to be allowed and the same is accordingly allowed. The impugned circular no. 96/2014 issued by respondent no. 2 and the communication dated 13.04.2015 issued by the Director of Board of College and University Development, stands quashed and set aside. Rule is accordingly made absolute. In the facts and circumstances of the case, there shall be no order as to costs.

**( K. L. WADANE )**  
**JUDGE**

**( R. M. BORDE )**  
**JUDGE**

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