

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

WRIT PETITION NO.650 OF 2015

Safdar Ali Siddiqui,
Age 39 years, Occ.Service,
R/o Flat No.6, Second floor,
Hayat Heights, Manzoorpura,
Tq. and Dist.Aurangabad. ... Petitioner.

Versus

1. The State of Maharashtra,
The Secretary, Education
Department, Mantralaya,
Mumbai.

2. Regional Officer,
AICTE- Western Regional
Office, 2nd floor, V.N.Road,
Churchgate, Mumbai.

3. The Director,
Directorate of Technical
Education, State of
Maharashtra, Mahapalika Marg,
Opp. Metro Cinema, Mumbai.

4. Vice Chancellor,
Dr.Babasaheb Ambedkar
Marathwada University,
Aurangabad.

5. Dr.Biyabani Syed Najeebuddin,
Age 39 years, Occ.Service,
R/o House No.1-3-96, Rohila
galli, Devdi Bazaar,
Aurangabad. ... Respondents.

Mr.V.D.Sapkal, advocate holding for
Mr.T.Y.Sayyed, advocate for the petitioner.
Mr.P.S.Patil, Additional Government Pleader for
the State.
Mr.S.V.Dixit, advocate for Respondent No.5.

...

**CORAM : S.V.GANGAPURWALA AND
K.L.WADANE, JJ.**

Date : 24.01.2017.

PER COURT :

1. Heard.

2. The petitioner seeks directions to conduct inquiry into the legality and validity of Master of Computer Application (MCA) degree obtained by the Respondent NO.5.

3. Mr.Sapkal, learned counsel for the petitioner submits that the MCA degree obtained by Respondent No.5 from Dr.Babasaheb Ambedkar Marathwada University is not legal and valid. The Respondent No.5 had appeared for the said course through Institute of Management Training and Research (IMTR). The Government had not granted recognition to the said institution to run the said course. Even the affiliation can not be

granted by the University unless the Government grants recognition. The same is the mandate of Sections 82 and 83 of the Maharashtra Universities Act, 1994. The procedure prescribed U/s 83 of the Maharashtra Universities Act, is required to be adhered scrupulously before any affiliation is to be granted. The institute from which the Respondent No.5 had completed the MCA course in the year 1998-99 was not granted any recognition by the Government nor approval was granted by AICTE. In absence of any recognition being granted by the Government, the University could not have granted any affiliation. Degree obtained by Respondent NO.5 of MCA course, as such is nonest and does not have any legal force. According to the learned counsel, the Respondent No.5 obtained employment with the Millennium Institute of Management, on the basis of such an illegal degree. The Respondent No.5 does not have any authority to hold the post with the said institute. The Respondent No.5 at present is holding the post of Associate Professor and this Court while exercising jurisdiction under Article 226 of the Constitution of India and in Quo-

warranto proceedings is empowered to conduct a judicial inquiry. The executive action can be controlled in the matter of making appointments to public offices. The learned counsel relies on the judgment of the Apex Court in the case of **"Rajesh Awasthi Vs. Nandlal Jaiswal and others"** reported in **(2013) 1 Supreme Court Cases 501**. The learned counsel relying on the judgment of the Apex Court in the case of **"University of Mysore Vs. C.D.Govinda Rao and another"** reported in **AIR 1965 Supreme Court 491**, submits that if the public office is held in connivance with the executive then this Court can exercise its jurisdiction to issue writ of Quo-warranto. The learned counsel further submits that a degree to be awarded by the University should be in conformity with the Statute and a person who does not possess the valid degree, has no right to appointment. To substantiate the said contention, the learned counsel relies on the judgment of the Apex Court in a case of **"Pramod Kumar Vs. U.P.Secondary Education Services Commission and others"** reported in **(2008) 7 Supreme Court Cases 153**.

4. Mr.Dixit, learned counsel for Respondent No.5 submits that petitioner is unconcerned with the post occupied by the Respondent No.5. The petitioner has no locus to file such a petition and the same is filed with malafide intention. Public Interest Litigation is not permissible in Service Jurisprudence. According to the learned counsel, proper parties are not made by the petitioner. On that count only it deserves to be dismissed. The IMTR was having recognition of the erstwhile Marathwada University to run MCA course. It is not the case that no recognition was granted by the University to the said institute. The Respondent No.5 had appeared for examination conducted by Dr.Babasaheb Ambedkar Marathwada University at the relevant time and had passed the examination and valid degree has been awarded. The Respondent No.5 has subsequently been awarded Ph.D.

5. The Respondent No.5 has been conferred with the degree of MCA by Dr.Babasaheb Ambedkar Marathwada University in the year 1999. The documents filed on record, more particularly, the

documents dated February 6, 1997 and July 24, 1998 shows that the University had granted recognition to the said Institute of Management Training and Research (IMTR) to conduct various courses. Master of Computer Application (MCA) is one such course. It would be clear that in the year 1997, the University had processed the application of the said institute for continuation of the recognition for the academic year year 1996-97. It also considered the recommendations of the Local Committee as per Section 86 of the Maharashtra Universities Act and granted continuation of recognition to eight (8) courses to be conducted by IMTR. MCA is one such ocourse. It would be clear that the affiliation was granted by the University. Dr.Babasaheb Ambedkar Marathwada University is recognised Univesity and there is no debate over the same. Whether the recognition was rightly granted by the University to the Institute at the relevant time would not be a question to be probed into in the present Writ Petition. When the Respondent No.5 took admission for the said course with the IMTR, the same was recognised by

the University. The Respondent No.5 certainly was not at fault.

6. The Respondent No.5 has been appointed in Private Institution and is now working as Associate Professor in said Institution. The petitioner is not affected by the appointment of Respondent No.5. Even if it is assumed that the procedure for giving recognition was not scrupulously adhered by the University at the relevant time, it would not have any effect on the degree awarded by the recognised University. The Respondent No.5 subsequently has also been awarded with Ph.D. degree in the said course.

7. Considering the aforesaid conspectus, it can not be said that the degree awarded by Dr.Babasaheb Ambedkar Marathwada University to the Respondent No.5 of having passed MCA course is invalid.

8. In light of the above, the petitioner is not entitled for the relief claimed. The Writ

Petition as such is dismissed. No costs.

(K.L.WADANE, J.)

(S.V.GANGAPURWALA, J.)

asp/office/wp65015

