

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

Writ Petition No. 06350 of 2017

District : Aurangabad

1. Miss. Samidha d/o. Umesh Rathi,
Age : Major,
Occupation : Student,
R/o. 4, 'Tulsi' Shriram Colony,
Samarth Nagar, Aurangabad.
2. Miss. Priyanka d/o. Ramesh
Tambatkar,
Age : Major,
Occupation : Student,
R/o. C-2/102, N-74, CIDCO,
Aurangabad.
3. Miss. Archana d/o. Shriram
Pazade,
Age : Major,
Occupation : Student,
R/o. Plot no.5, Pandit Colony,
Old Bhavsingpura, Aurangabad.
4. Miss. Sayli d/o. Anil Chaudhari,
Through her mother
Bharti A. Chaudhari,
Age : Major,
Occupation : Student,
R/o. At Post Sayadrinagar,
N-5, House no.773, CIDCO,
Aurangabad.
5. Miss. Aarti d/o. Arjun Gunjal,
Age : Major,
Occupation : Student,
R/o. At Post : Bolthan,
Taluka Nandgaon,
District Nashik.
6. Miss. Vaishnavi d/o. Govind
Mandhane,
Age : Major,
Occupation : Student,

R/o. Anubhuti Apartment,
Bansilal Nagar, Aurangabad.

7. Miss. Akanksha d/o. Vishnukumar
Mishra,
Age : Major,
Occupation : Student,
R/o. Plot no.15,
Behind New Mondha,
Suryawadi, Aurangabad.

8. Miss. Sachi d/o. Ravindra
Deshmukh,
Age : Major,
Occupation : Student,
R/o. Plot no.23,
'Swapna Shilp',
Renuka Housing Society,
Pahadsingpura,
Guruganeshnagar,
Aurangabad.

9. Miss. Shweta d/o. Deelip
Gaikwad,
Age : Major,
Occupation : Student,
R/o. Vitthal Nagar,
Phulambri,
District Aurangabad.

10. Miss. Namrata d/o. Rajesh
Ughade,
Age : Major,
Occupation : Student,
R/o. Hanuman Tekdi,
D.Ed. College,
New Pahadsing Pura,
Aurangabad.

.. Petitioners.

versus

1. The State of Maharashtra,
Through Secretary,
Higher & Technical Education
Department,
Mantralaya, Mumbai.

2. The Vice Chancellor,
SNDT Women's University,

1, Nathibai Thackersey Road,
Mumbai.

3. Bhagwan Shikshan Prasarak
Mandal,
Through its President &
Secretary,
Dr. Y.S. Khedkar Marg,
N-6, CIDCO, Aurangabad.

4. Beau Monde College of
Home Science,
Through its Principal
BSPM Campus,
Dr. Y.S. Khedkar Marg,
N-6, CIDCO, Aurangabad.

.. Respondents.

.....

Mr. P.K. Lakhotiya, Advocate, for petitioners.

*Mr. S.P. Sonpawale, Asst. Government Pleader, for
respondent no.01.*

Smt. V.A. Jadhav, Advocate, for respondent no.02.

*Mr. S.G. Rudrawar, Advocate, for respondents
no.03 and 04.*

.....

**CORAM : R.M. BORDE &
SMT. VIBHA KANKANWADI, JJ.**

**Date of reserving
the judgment : 25th September, 2017**

**Date of pronouncing
the judgment : 05th October, 2017**

JUDGMENT (Per Smt. Vibha Kankanwadi, J.) :

01. Rule. Rule made returnable forthwith. By
consent, heard finally.

02. All the petitioners are taking education in Bachelor degree course in B. Design course in respondent No. 4 college. Petitioners have invoked writ jurisdiction of this court under Art. 226 of Constitution of India for the issuance of writ of mandamus to declare the results of the petitioners for the 1st year examination conducted for the academic year 2015-2016 and for conduct of 4th semester examination. They have also prayed for the compensation.

03. Petitioners were admitted by respondent No. 4 College for the four year degree course in design viz. "B Design" in 2015-2016. The said course consists of 8 semesters. It was disclosed by respondent No. 4 while admitting petitioners that the college is affiliated to respondent No. 2 University. All the petitioners have paid amount of Rs.65,000/- each towards fee of the academic year 2015-2016 as per the advertisement published by respondent No. 4. All the petitioners have attended the classes regularly and submitted their projects. Respondent No. 4 had issued

certificate for the completion of the project. Respondent No. 4 has conducted 1st and 2nd semester in 2015 and April 2016 respectively. However, respondent No. 4 has not declared the results. It was informed that due to some problem with University their result of 1st year will be declared after 3rd semester. Petitioners had believed in the words of respondent No. 4. Petitioners took admission for the current academic year 2016-2017 and attended the classes. The examination of the 3rd semester were also conducted in September 2016. Thereafter they had visited office of the Principal many times for the declaration of their 1st year result; however, the authority had avoided to give any reason. Petitioners came to know that respondent No. 4 will not be conducting any examination of 4th semester. It has been contended that petitioners are from rural background and they are from middle class. They have been kept in dark by the respondents. They are unable to pursue their further studies because of inaction on the part of respondents. Hence, petitioners have filed this writ.

04. Affidavit-in-reply has been filed by Dr.

Rajeev Khedkar, Secretary of respondent No. 3. He has stated that respondent No. 3 had forwarded application to respondent University, for grant of extension of affiliation of new faculty for the academic year 2013-2014 on 5-10-2013. They had also paid amount of Rs.50,000/- by demand draft. Respondent was running B. Design course and initially on the basis of oral communication by the respondent University, it was told that a fresh application is required to be submitted. It was informed on 25-3-2014 that expert committee will examine the proposal. Amount in the nature of fixed deposit and resolution/ undertaking was forwarded as part of further procedure. Those documents were sent to Government. Inspection was done. Government resolution came to be passed on 30-8-2014 to grant permission to open and establish said course. Respondent thereafter made representation for affiliation. The affiliation came to be granted vide GR dt. 9-9-2016 to run the new faculty of "B. Design" course from the academic year 2016-17. There is delay for obtaining permission which was beyond the control of respondent. Result of the students has been declared in May 2017.

05. Affidavit-in-reply has also been filed by Shri. S. N. Bharambhe, Registrar of respondent No. 2 on behalf of respondent No. 2. It has been contended that respondent No. 4 had admitted the students before the affiliation. Respondent College had not intimated about the admission given to the students. The facts have been brought to the knowledge of the University only through the petition. Students ought not to have been admitted in absence of affiliation prior to 2016. Results of the petitioners cannot be declared for examination of the academic year 2015-2016.

06. Heard learned counsel Shri. Lakhotiya for the petitioners, learned AGP for respondent No. 1, learned counsel Smt. V. A. Jadhav for respondent No. 2 and Shri. S. G. Rudrawar for respondents No. 3 and 4. We have gone through the documents produced on behalf of parties with the help of learned counsel. Taking into consideration the controversy involved, the matter is decided to be taken up for final hearing with consent of all the parties.

07. It has been argued on behalf of petitioners that there is no dispute that the petitioners were admitted to "B. Design" course by respondent No. 4 college run by respondent No. 3 in the year 2015-2016. There was no affiliation to the course at that time. However, respondents No. 3 and 4 gave impression about the said affiliation and therefore, petitioners sought admission. Examinations were also conducted by respondent No. 4. But the petitioners have come to know about the non-affiliation after the petition. Respondent No. 4 has declared the result of the petitioners of the 1st year in May 2017 showing that the examinations were held in 2016-2017, when in fact that was held in 2015-2016. An academic year of the petitioners has been lost. Hence, they are entitled to the reliefs claimed.

08. Per contra, it has been argued on behalf of respondents No. 3 and 4 that every effort was made by the respondents to get the affiliation. Application was made in 2014 and letter of intent was given on 30-8-2014. Thereafter, on the oral permission from respondent No. 2 University, the admissions were given

in 2015. Examinations were conducted and petitioners have appeared for the same. The results have been declared.

09. It is not in dispute that respondent No. 4 had given admission to the petitioners for the "B. Design" course in 2015. At the time of admission, it was represented that the college is affiliated to respondent No. 2 University. Petitioners have produced documents in the form of syllabus, course details, advertisement and receipts of fees, admit cards, and certificates issued by respondents No. 3 and 4. These documents clearly show that such representation was made. Taking into consideration the representation about affiliation, petitioners have paid tuition fees. They have attended the college regularly and gave examination. They have given examination for the 1st, 2nd and 3rd semester. Till the 3rd semester, petitioners were kept in dark about non-affiliation with respondent No. 2 by respondent No. 3 and 4.

10. It is further to be noted that even the 1st year examination i.e. two semesters were conducted at

the college level by respondent no.4 in 2015-2016, thereby impressing upon the petitioners that the course is affiliated to respondent no.2 - University. The question papers produced at pages no.78, 79, 81, 82 and 83 would show that even it was printed on the question papers that the college is affiliated to respondent no.2 - University.

11. Respondent no.3 and 4 have contended that they had given application on 05-10-2013 for extending affiliation to the new faculty to respondent no.2. They had forwarded necessary amount along with the said application. The said amount was accepted by respondent no.2 - University and thereafter by letter dated 25-03-2014, it was informed to respondent no.3 that the team of experts will visit the college in order to see the facilities offered. There is no dispute that the Committee had paid visit. In the meantime, letter of intent was issued on 30-08-2014 by the Government. However, the said notification specifically states that unless final letter of approval is obtained, the college shall not give admissions. It also appears from the communications

from respondent no.3, dated 07-05-2015, 11-05-2015 and 30-06-2015 that the respondent no.3 and 4 were very much aware that they cannot admit students for the said course, unless there is final approval. The final approval was not even accorded on 30-06-2015 and, therefore, respondents no.3 and 4 were not justified in admitting the students i.e. petitioners for the academic year 2015-16.

12. Thus, inspite of knowledge that the college is not affiliated to respondent no.2 - University and they were not permitted to admit the students, yet respondent no.3 and 4 admitted the students i.e. petitioners, accepted the tuition fees from each of them and even conducted the course. This amounts to playing with the future of the students. The final approval for the said course has been accorded by the Government by notification dated 09-09-2016.

13. The agony of the petitioners can be further seen from the fact that after the petition was filed, respondent no.4 has declared result of the petitioners for the 1st year, contending that the examination was

held in 2016-17; when in fact, the said examination was held in 2015-16. The said act on the part of respondents no.3 and 4 is definitely required to be deprecated and it appears to have caused wrongful loss of the petitioners and wrongful gain to themselves. Such act on the part of an educational institution cannot be allowed to be sustained. A student takes admission in a college after making every enquiry in order to build his future. In this case also, the petitioners had made necessary enquiry before taking admission. They were represented by respondent no.3 and 4 that the course is affiliated to respondent no.2 - University. However, in fact, it was not the true fact. Thereby there is loss of one academic year for the petitioners. We would like to rely on the observations of Apex Court in **Sunil Oraon v/s. CBSE** reported in **(2006) 13 SCC 673**. It has been observed that,

"Time and again, therefore, this Court has deprecated the practice of educational institutions admitting the students without requisite recognition or affiliation. In all such cases the usual plea is the career of innocent children who have fallen in the hands of the mischievous designated school authorities. As the factual scenario delineated against goes to show that the

school has shown scant regards to the requirements for affiliation and rightly highlighted by learned counsel for CBSE, the infraction was of very serious nature".

14. Now, the petitioners have prayed that their result for the 1st year be declared and 4th semester examination should be conducted. However, it is to be noted that when the course was not recognized for the earlier period, such prayer cannot be granted. Now, respondent no.4 has declared result of 1st year examination of the petitioners and, therefore, taking into consideration the fact that the affiliation has been granted from the academic year 2016-17, the petitioners will have to take admission and undergo the course for the 2nd year in this academic year.

15. The loss that has been suffered by the petitioners as a result of aforesaid acts of respondents no.3 and 4, in our opinion, is irreparable and cannot be compensated adequately. However, the mental agony and the efforts that the petitioners would be required to put again will have to be compensated adequately. The petitioners are coming from middle class families from rural areas. Some of

them are from villages far away from Aurangabad. They would have made their arrangement for residence or taken shelter in the hostel. An academic year of the petitioners is thereby lost and respondent no.03 and 04 are responsible for the same. They should not go scot free. In the decision of **Prabhakar Vithal Gholve v/s. State of Maharashtra** reported in **AIR 2016 SC 2292**, Hon'ble Supreme Court has imposed costs of Rs.5 crores on Kalinga Institute of Medical Sciences (KIMS) for admitting more students than quota. Though the facts of the said case are different, yet it is required to be considered while compensating petitioners in this case. The facts giving rise to present case are more grave than the said case.

16. Respondents no.03 and 04 had the knowledge that unless they are given final approval for affiliation, they were not permitted to admit the students. Not only they gave admission, but conducted classes as well as took examinations. Respondent no.04 has issued incorrect mark-sheets just to save itself or with ulterior motive. It is sheer act of negligence on the part of college. Hence, stringent

action is required to be proposed so that none of the colleges or educational institution should think of playing with the future of the students. We, therefore, propose to direct respondent no.01 and 02 to initiate appropriate action against respondents no.03 and 04.

17. Hence, the following order :

Order

(a) The writ petition is partly allowed.

(b) Respondents no.3 and 4 i.e. educational institution and college are directed to deposit amount/ costs of Rs. 25,00,000/- [Rupees twenty five lacs] in this Court within a period of six weeks from the date of this order. After the deposit of the said amount, amount of Rs. 2,00,000/- [Rupees two lacs] be given to each petitioner as compensation. Rest of the amount be credited to Government.

(c) Respondent No. 3 and 4 shall not recover the said amount of costs of Rs.25,00,000/- in any manner from any student or adjust against the fees or from provision of facilities for students of any present or subsequent batches.

(d) Respondent no.3 and 4 shall admit the

petitioners, if they desire, to the next academic year, in view of the affiliation that has been received from respondent No 2 University.

(e) Respondent no.01 and 02 are directed to initiate appropriate action against respondent no.03 and 04 within a period of three months from the date of this order for the aforesaid acts.

(f) Rule made absolute in the above terms.

(Smt. Vibha Kankanwadi)
JUDGE

(R.M. Borde)
JUDGE

.....