

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.6259/2017

Shri Vile Parle Kelvani Mandal,
a Society registered under the
Societies Registration Act, 1860 and
also a Public Charitable Trust
registered under the Bombay Public
Trust Act, 1950 having its office
at Shri Bhaidas Maganlal Sabhagriha
Building, North South Road No.1,
Juhu Scheme, Vile Parle (West),
Mumbai – 400056, through its
Constituted Attorney
Mr.Rajgopal Bhandari.

...Petitioner..

Versus

- 1] The State of Maharashtra,
through Principal Secretary,
Higher & Technical Education
Department, 4th Floor, Mantralaya Annex,
Madam Cama Road, Nariman Point,
Mumbai-400032.
- 2] Directorate of Technical Education,
Maharashtra State, having its office at
Samangaon Road, Nashik.
- 3] All India Council for Technical
Education, through its Western
Regional Office at 2nd Floor,
Industrial Assurance Building,
Veer Nariman Road, Opp.Churchgate
Railway Station, Mumbai – 400020.

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- 4] North Maharashtra University
incorporated under the Maharashtra
University Act, 1994 having its
office at Umavi Nagar,
Jalgaon - 425001.
Through its Registrar.
- 5] Dr.Babasaheb Ambedkar Technological
University, incorporated under the
Maharashtra Vidyavihar, Loner,
Dist.Raigad - 401403.
Through its Registrar.

...Respondents...

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Shri P.M. Shah, Senior Advocate i/b Shri S.R. Vakil and
Smt.Manoramam Mohanty, Advocates for petitioner.
Shri A.V. Deshmukh, AGP for respondent nos.1 & 2.
Shri S.V. Advant, Advocate for respondent no.3.
Shri Y.B. Bolkar, Advocate for respondent no.4.
Shri A.R. Borulkar, Advocate for respondent no.5.

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**CORAM: ANOOP V. MOHTA &
SUNIL K. KOTWAL, JJ.**

DATE: 21.06.2017

ORAL JUDGMENT (Per Anoop V. Mohta, J.) :

1] Heard learned counsel appearing for parties.
Rule made returnable forthwith. With the consent,
petition is taken for final hearing and disposal.

2] Petitioner is an unaided linguistic minority
educational institution running various new
institutions / colleges at different places since long.
It applied to start a pharmacy college at Dhule for

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academic year 2017-18 on 31.10.2016 under then existing provision of Section 81 of the Maharashtra University Act, 1994. Respondent no.4, however, was not considering the case and as there was delay in starting new college, it made an application to respondent no.5 on 25.1.2017 to start degree course in pharmacy for the same year. Respondent no.5, Dr.Babasaheb Ambedkar Technological University (the University), is constituted under the provisions of Dr.Babasaheb Ambedkar Technological University Act, 2014 (the Act). This Act is applicable to the Districts so prescribed in Schedule II of Section 4(5), which includes petitioner's place. The importance of affiliation is recognized for all the purposes. To start any institution and/or college, a requisite affiliation / recognition from the concerned authorities including the State and the concerned University, is the mandatory requirement. The University, with whom the application was filed in January, 2017, failed to take any steps and not yet granted the affiliation.

3] As required, petitioner on 4.2.2017 filed an application with supporting documents, to All India Council for Technical Education (AICTE) for starting a

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new degree course in pharmacy. It is governed under All India Technical Education Act, 1987 (for short AICTE Act). This is the prime body to control the norms and standards of common development of "technical education" and related aspects at all levels throughout the country. It also requires to regulate and ensure proper maintenance of norms and standards in technical education system. The AICTE Act itself provides for the procedure to grant approval for starting new technical institutions and for introduction of new courses including variation in intake capacity in consultation with the agencies concerned.

4] The dominance of AICTE and its related agencies has been recognized by the Supreme Court in *State of Tamilnadu & another v. Adhiyaman Educational & Research Institute & others* (**JT 1995 (3) SC 136**); *Parshvanath Charitable Trust v. All India Council For Technical Education* (**(2013) 3 SCC 385**). The judgment of Division Bench of this Court in *Dr.D.Y. Patil Pratishthan's Padmashree Dr.D.Y. Patil Polytechnic, Kolhapur v. Directorate of Technical Education, Mumbai & others* (**(2014 (5) Mh.L.J., 590)**), in which one of us (Anoop V. Mohta,

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J.) is a party, has reiterated the same. In *Dr.D.Y. Patil* (supra) the observations are based upon the judgments of the Supreme Court, in following paragraph nos.14, 15 and 21 as under:-

"14. A Division Bench of this Court (Nagpur Bench) in *Shri Shivaji Education Society, Amravati & Anr. vs. Maharashtra University of Health Sciences & Ors. (2012(1) Mh.L.J.799)* after taking note of various Supreme Court Judgments including *Jaya Gokul Education Trust vs. Commissioner & Secretary to Government Higher Education Deptt., Thiruvananthapuram and Another (AIR (2000) 5 SC 231)* held that "once the permission has been granted by Indian Medical Council to start the particular post graduate course, the further resolution by the State Government as well as the affiliation by the University would be a mere formality."

15. Here in the present case, AICTE is the final authority who has granted the permission to open the new colleges and to start the technical new colleges/courses with given intake capacity.

21. There is nothing on record to show that the State Government at any point of time had challenged even the decision/approval given by the AICTE to the Petitioner's new colleges and/or new courses in question. The AICTE approval, therefore, in our

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view, binds even the Respondent State so far as permission to start new colleges/new courses. This in no way means that the State Government has no control and/or supervisory power over such Institution in the State of Maharashtra. All parties, in our view, are bound by the decision/sanction so granted by the AICTE unless challenged and/or set aside. The Respondent State, in our view, just cannot withhold their permission to the Petitioner to start the institution/course/increase intake capacity as approved by AICTE. They have no choice but to issue appropriate Government Resolution to grant permission to the institutions accordingly forthwith, in view of the time constraints."

5] In *Shri Shivaji Education Society, Amravati & another v. Maharashtra University of Health Sciences & others* in **Writ Petition No.3888/2011** decided on 4.10.2011 at Nagpur Bench of this Court, it is observed in paragraph no.13 as under:-

"13. In view of decision of the Supreme Court in case of *Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust, V/s. State of Tamil Nadu and others* (supra) the provisions of section 10A of the Indian Medical Council Act override the provisions of section 64 and 65 to the extent

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they are contrary. As has been held in *Sant Dnyaneshwar V/s. State of Maharashtra 2006 (9) S.C.1*, the provisions of sections 64 and 65 will have to be held as not applicable in the present case. That means, once the permission has been granted by Indian Medical Council to start the particular post graduate course, the further resolution by the State Government as well as the affiliation by the University would be a mere formality and would not debar the college in admitting the students." (emphasis added)

6] Learned counsel appearing for AICTE points out that the issue of supremacy of Pharmacy Council and/or of the AICTE is pending in Supreme Court, but without prejudice to this, it is further pointed out by learned counsel appearing for AICTE that the Apex Court in *Orissa Technical Colleges Association v. AICTE & others*, in **Civil Appeal No.6938/2015**, on 6.1.2016 has observed as under:-

"We see no reason to decline that prayer. It is evident from the orders earlier made that this Court has permitted AICTE to process all applications of technical institutions for extension of approval, variation of intake, start of new courses, establishment of new technical institutions etc. in accordance with the AICTE

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Approval Process Handbook published by the AICTE from year to year. That being so, AICTE can in our opinion be left free to continue publishing the Approval Process Handbook from year to year in future also till orders to the contrary are passed by this Court. We accordingly allow this application and direct that AICTE shall be free to publish for the Session 2016-2017 and the academic sessions following thereafter the requisite AICTE Approval Process Handbook as in the past and regulate the subject matter relating to technical institutions as mentioned above including MBA/management courses in accordance with the said hand-book." (emphasis added)

7] In a Full Bench decision of this Court in *Mahatma Gandhi Missions Institute, Aurangabad v. State of Maharashtra & others* (2008(5) Mh.L.J., 913, it is held that opinion of AICTE is of utmost importance and shall take precedence over the views of the State as well as that of the University.

8] Similar application was also filed by the petitioner to Joint Director of Technical Education for imparting degree course in engineering. On 11.2.2017, reminder was sent to respondent – University to grant affiliation so also on 13.3.2017, but in vain.

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Respondent no.2 – Director of Technical Education on 16.2.2017 forwarded no deficiency report to its regional office and thereby granted approval for starting new college to petitioner.

9] As there was no response from respondent nos.4 & 5 at the relevant time, therefore, a writ petition was filed on 4.5.2017 for seeking direction for affiliation on or before 4.6.2017. Petitioner, therefore, again made a representation pursuant to order passed by this Court on 8.5.2017. Respondent no.2 mentioned petitioner's name in the list of new institutions approved by AICTE at Sr.No.2079 subject to certain conditions which petitioner – institution is required to follow, however, put certain restrictions referring to the perspective plan for two / three courses only. Petitioner's prayer / application is always based upon foundation of approval / sanction granted by AICTE dated 30.4.2017. There is nothing on record to suggest any major deficiencies, which go to the root to refuse and/or withhold any such requisite affiliation / permission required from the State and/or by University.

10] Petitioner having complied with all the

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requisite formalities apart from placing AICTE approval and the completion of all the formalities including deposit of amount so required. Yet as there was no action from the University, therefore, it was required to move the High Court for interim order to avoid the complications to start in time new college for academic year 2017-18.

11] This Court, after considering above judgments and undisputed position on record, directed by order dated 6.6.2017 as under:

"[i] The following names of colleges, approved courses and approved intake capacity on the website i.e. www.dte.org.in of the Directorate of Technical Education, Mumbai, shall be displayed immediately by the respondents-

<u>W.P.No.</u>	<u>Name of college</u>	<u>Approved course</u>	<u>Approved intake capacity</u>
6259/17	Shri Vile Parle Kelvani Mandal's Institute of Pharmacy, Dhule.	Pharmacy	100
6281/17	Shri Vile Parle Kelvani Mandal's Institute of Technology, Dhule.	a] Computer Engineering	60
		b] Information Technology	60
		c] Electrical Engineering	60
		d] Mechanical Engineering	60
		e] Civil Engineering	60

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[ii] This is without prejudice to the rights and contentions of the parties. There is no question of claiming any equity and the same will be subject to further orders.

[iii] It is made clear that while listing on the website, the concerned respondents to mention against the names of the respective institutions that the listing of their names is subject to further orders in pending writ petitions.

[iv] The petitioner in both these petitions undertake to make necessary payment to the concerned respondents within 48 hours, if not already paid.

[v] Respondent no.2 shall take steps so that the name of the petitioner – institution be added at the earliest enabling the students / parents to apply for the respective seats within the prescribed period.

[vi] Respondent nos.4 and 5 shall decide the representation / application so filed by the petitioner seeking affiliation as early as possible in view of the order already passed on 4.5.2017 and even otherwise before 17.6.2017.

[vii] The respondents to file affidavit in reply, if not already filed, within two weeks.

[viii] S.O. to 19.6.2017 for final disposal."

12] It is informed by the learned counsel for

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parties that above interim order is complied with only by the State and again not by the University. We are, therefore, proceeding further to pass final order.

13] Respondent – State and respondent no.5 and respondent no.4, filed their respective reply. We are not dealing with reply of respondent no.4 as the basic affiliation is now sought from respondent no.5. The only fact is required to be noted is that petitioner did apply to respondent no.4 in October, 2016, as required for the affiliation. However, in view of the provisions of the Act of 2014, respondent no.5 is the concerned University, we are dealing with their reply for deciding the prayers so made.

14] In the affidavit in reply filed by respondent no.5 for the first time, though represented from time to time since January, 2017, never communicated in writing any adverse order to petitioner. Strikingly, for the first time it is stated that affiliation even, if any, would be and required to be read for the academic year 2018-19 thereby rejected the affiliation so sought since January, 2017. This approach, in our view, is unacceptable and contrary to the basic provisions and

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obligations which are required to be complied with and/or to be followed by the University while dealing with such applications as per provisions of University Act and specifically Sections 4 and 110 and Schedule to the Act. The submission that petitioner ought to have applied before October, 2016, in the present facts and circumstances, is not acceptable as respondent in the Court only for the first time expressed views by overlooking the judgments in *Tamilnadu & another v. Adhiyaman Educational & Research Institute & others* (supra); *Parshvanath Charitable Trust v. All India Council For Technical Education* (supra) and *Dr.D.Y. Patil Pratishthan's Padmashree Dr.D.Y. Patil Polytechnic, Kolhapur v. Directorate of Technical Education, Mumbai & others* (supra), so referred above, whereby it is reiterated that after the AICTE approval, the affiliation and/or approval and/or sanction from the University and/or such concerned authority is merely a formality. The timely action in education matters is a must. The delayed action takes away and/or affects the rights not only of petitioner – institution, who wants to establish the college at or within the area, but also of the

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interested students / parents. Therefore, it is in the interest of public at large that the timely action should have been initiated by the University.

15] Having once obtained the requisite permission from the AICTE and applied in time by taking all necessary steps and as there are no defects and/or major deficiencies, we see no reason for the University to delay the proceedings and not to grant affiliation so sought for. The rejection so communicated for the first time through reply, in our view, is, therefore, unsustainable and not in accordance with law so laid down by the Court from time to time in this regard.

16] We are in no way accepting the case of respondent nos.2 and 4 that they have authority over the decision / approval granted by AICTE to start such college with requisite intake approved for the year 2017-18. All the concerned respondents are always at liberty to have inspection and verification to see that the institutions have infrastructure and complied with all the formalities and facilities for imparting the technical education to the concerned students. We also permit the respondents to take inspection, if necessary,

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with immediate effect after giving due notice to all concerned parties.

17] The aspect of the State perspective plan and/or related objection including the objection that AICTE permission / approval itself was dependent upon the requisite affiliation from the University should not be the reason to overlook the judgments passed by the Supreme Court and the High Courts giving importance to AICTE authority and its approval.

18] The issue so raised of perspective plan and the so called endorsement made by the State Government in view of the judgments, so referred and quoted above, is unsustainable. The submission that as the University has not granted affiliation, therefore, petitioner should not be permitted to start new college, as prayed, in this academic year 2017-18, is also unacceptable. The AICTE approval / sanction, in our view, requires to be accepted by the respondent – State as well as by the University unless major defects / deficiencies, after due inspection and enquiry, noted and which petitioner could not and/or is unable to remove. The respondents are permitted to take inspection within 10 days and do the needful

accordingly.

19] Therefore, taking over all view of the matter, a case is made out by petitioner to issue direction to grant the affiliation for the academic year 2017-18 to start from June / July, 2017. We are, therefore, inclined to allow this writ petition only to the following extent.

O R D E R

a] Respondent nos.2 and 5 are directed to grant affiliation / permission to petitioner to start college for the academic year 2017-18, as approved / sanctioned by the AICTE by order dated 30.4.2017, forthwith.

b] Interim order passed by this Court dated 6.6.2017 is confirmed.

c] It is made clear that petitioner needs to comply with all the formalities, including payment of fees as early as possible.

d] Respondent no.5 University to have complete inspection within 10 days. Deficiencies, if any, need to be removed at the earliest before commencement of session of this year by the petitioner institution.

e] Above order is made subject to final order of

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the Supreme Court as it is stated that the issue of supremacy of AICTE over Pharmacy Council and/or Council of Architecture, is pending.

f] As the judgment / order is dictated in open Court in presence of all parties / learned counsel, the concerned respondents need not wait for the certified copy of judgment / order. They should act forthwith, as ordered.

g] Rule is made absolute accordingly. No costs.

(SUNIL K. KOTWAL, J.)

(ANOOP V. MOHTA, J.)