

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

WRIT PETITION NO. 7027 OF 2017

Shri Balaji Shikshan Prasarak
Mandal, Gangakhed, Taluka
Gangakhed, District Parbhani,
through its Secretary,
Amruta w/o Gangadhar Mundhe,
Age 27 years, Occu. Household,
C/o Sai Institute of Engineering
and Technology, Chauka Bilda,
Ajintha road, Taluka Fulambri,
District Aurangabad

.. Petitioner

Versus

1. The State of Maharashtra,
through Director of Technical
Education, The office of Director
of Technical Education,
(Maharashtra), 3, Mahapalika
Marg, Mumbai 400 001.
2. The Joint Director of Technical
Education, Marathwada region,
Regional Office,
Railway Station road, Osmanpura,
Aurangabad
3. The Registrar/In charge Officer,
Dr. Babasaheb Ambedkar
Marathwada University,
Aurangabad

.. Respondents

Mr V.J. Dixit, Senior Counsel i/b Mr B.R. Kedar, Advocate for petitioner
Mr M.B. Bharaswadkar, A.G.P. for respondents no.1 and 2
Mr S.G. Chapalgaonkar, Advocate for respondent no.3

**CORAM : R.M. BORDE AND
A.M. DHAVALA, JJ**

DATE : 18th July 2017

ORAL JUDGMENT (Per R.M. Borde, J.)

1. Rule. Rule returnable forthwith. With the consent of parties,
heard finally at the stage of admission.

2. The petitioner – institution, by way of presenting the instant petition is objecting to the communication dated 20th/23rd May 2017, annexed at Exh.`E' as well as the notice issued by the authorised in-charge Officer dated 23rd May 2017 i.e. the Registrar, in-charge Officer, Dr. Babasaheb Ambedkar Marathwada University, Aurangabad cancelling the affiliation of the college operated by the petitioner from the academic year 2017-2018. The petitioner is also objecting to the resolutions passed by the Academic Council and Management Council dated 20th June 2017 and 27th June 2017 and the actions taken by the respondents pursuant to such resolutions.

3. The petitioner has been granted permission to run Sai Institute of Engineering and Technology with intake of 300 students for the year 2011. It is informed that at present there are approximately 1200 students taking education at the college. The university has also granted affiliation initially and continuation of affiliation has also been granted every year till 2016-2017. The university has also approved the intake of students in the technical institute operated by the petitioner. As a result of certain unfortunate instances relating to malpractice at examination committee by the students of second year Civil Engineering course on 16th May and 17th May 2017, punitive action has been taken against the college including the registration of Crime No.75/2017 against 27 students and some of the employees of the college. The Principal of the college transmitted a communication to the Registrar of university informing non-involvement of the management and the college in the instances of malpractice at examination. The petitioner contends that on 20th/23rd May 2017,

the in-charge Officer transmitted a communication to the petitioner informing that since criminal proceedings are initiated against the students and some of the employees of the college, until conclusion of those criminal proceedings, the technical institution operated by the petitioner shall not admit students and the students already admitted and taking instructions at the college shall be accommodated in other technical institution. It has also been informed that name of the petitioner-institute shall be included in the blacklist maintained for the purpose. The petitioner-institute has been called upon to tender reply by issuing a notice on the same day, i.e. 23rd May 2017 issued by in-charge Officer calling upon to explain as to why the affiliation granted by the university shall not be revoked. The petitioner is called upon to tender reply within a period of thirty days from the date of communication. The petitioner contends that the institute has tendered reply to the show-cause notice. In the meanwhile, the instant petition came to be presented and this Court, by virtue of the order dated 9th June 2017, permitted the petitioner to file/make representation/reply to the show-cause notice within three days from the date of the order and it was directed to the respondent no.3-university to deal with the same within seven days thereafter. It is further directed that no coercive steps be taken by the respondents based upon the impugned communication dated 23rd May 2017. It is pointed out by the petitioner that the respondent no.3-university in the meanwhile sent a local inspection committee on 16th June 2017 and considering the report of the said committee as well as the report by fact finding committee and the Dean's committee, recommendation was made not to continue the affiliation of the

college and not to permit the institute to admit the students. On the basis of resolutions adopted by the Dean's committee as well as the academic council, the Vice Chancellor approved the action of withdrawal of affiliation of the technical institution.

4. The petitioner contends that action taken by the respondent no.3-university is violative of Section 12 and 120 of the Maharashtra Public University Act, 2016 (hereinafter referred to as 'the Act' for brevity). Section 12, sub-section 7 of the Act vests emergency powers on the Vice Chancellor. It is provided in Sub-section 7 of Section 12 of the Act that if there are reasonable grounds for the Vice-Chancellor to believe that there is an emergency which requires immediate action to be taken, or if any action is required to be taken in the interest of the university, he shall take such action, as he thinks necessary, and shall at the earliest opportunity, report in writing the grounds for his belief that there was an emergency, and the action taken by him, to such authority or body as shall, in the ordinary course, have dealt with the matter. It is contended by the petitioner that the communication issued on 20th/23rd May 2017 is violative of principles of natural justice inasmuch as no opportunity has been given to the institution to show-cause in respect of the adverse action taken by the university. It is further contended that the action taken on 20th/23rd May 2017 directing the petitioner not to admit students and further issuing the directions to accommodate the students in other technical institutions as well as inserting name of the technical institute operated by the petitioner in the blacklist is also not in conformity of Sub-section 7 of Section 12 of the Act. It is

informed that there is nothing in the communication that the action has been authorised by the Vice Chancellor or that the Vice Chancellor, after taking the action has communicated the grounds for his belief that there is emergency, to the authority ordinarily dealing with the matter. Admittedly, the Vice Chancellor has not communicated the ground for his belief that there is emergency to any of the authority including academic committee or the Dean's committee. It is also informed that there is no blacklist contemplated under the Act nor such blacklist has been maintained by the university. The action taken in view of the communicated dated 23rd May 2017 is bad in law for the reason that the adverse action has been taken in breach of principles of natural justice and action is also violative of provision of Sub-section 7 of Section 12 of the Act.

5. It is contended that the notice dated 23rd May 2017 is also bad in law since the in-charge Officer has no authority to issue such notice. It is pointed out that the Dean's committee shall have the authority to initiate action in accordance with the provisions of Section 120 of the Act. It is pointed out that the Dean's committee has not issued the notice and as such, action based upon the notice dated 23rd May 2017 is bad in law. It is contended on behalf of the university that the Dean's committee has been constituted on 24th May 2017 and on the date of initiation of the action i.e. transmission of the notice, the Dean's committee was not in existence. In absence of Dean's committee, the action initiated at the instance of Vice Chancellor cannot be said to be violative of the Act. It is further pointed out that immediately after issuance of notice, the petitioner approached this

Court challenging the said notice and there was hardly any scope for the Vice Chancellor to take further action. This Court permitted the petitioner to tender the reply within three days and further issued directions to the university to take steps on consideration of reply within seven days from the date of tender of reply. It is pointed out that the university acted in pursuance to the directions issued by this Court and has continued the further proceedings. It has even not been demonstrated by the petitioner any prejudice caused as a result of non-observance of certain formalities prescribed in sub-section 7 of Section 12 of the Act for failure to record and transmit the reasons to the Dean's committee as well as academic committee. It is contended that the Dean's committee and academic committee adopted the resolution, which was transmitted to the Vice Chancellor who has taken action of cancellation of affiliation.

6. The petitioner contends that the reports of the Dean's committee as well as local inspection committee and the fact finding committee were not supplied to the petitioner and the action taken on the basis of the material, which is considered to be adverse to the petitioner without supplying the said material to the petitioner or extending opportunity to show-cause in respect of such material is in breach of the principles of natural justice. The petitioner is justified in saying that the impugned action taken in pursuance to the notice based upon consideration of three reports referred to above which has been approved by the Vice Chancellor, being in breach of observance of principles of natural justice deserves to be quashed and set aside.

7. The learned Counsel appearing for university has pointed out that the petitioner is in receipt of all the reports referred to above and it can very well make representation in respect of those reports, which can be reconsidered by the Vice Chancellor. He also fairly concedes that the Dean's committee would also give an opportunity to the petitioner and thereafter would proceed to take decision in pursuance to the provisions of Section 120 of the Act.

8. Considering the submissions made, we are of the view that the ends of justice would be served if the petitioner is extended an opportunity to tender its detailed reply on consideration of the reports to the Dean's committee, explaining the allegations levelled against the petitioner, as expeditiously as possibly, preferably within one week from today. On receipt of reply of the petitioner, the Dean's committee shall extend an opportunity of hearing to the petitioner-institution and may take appropriate action within a period of fifteen days from the date of receipt of the reply. It would be open for the respondent no.3-university to adopt further course of action i.e. consideration of report of Dean's committee and academic council and recommendation of the Dean's committee and academic council by the Vice Chancellor and taking consequential action, if any, in the facts and circumstances. The further adverse action taken against the petitioner of cancellation of affiliation, and its approval by the Vice Chancellor is quashed and set aside. There arises no question of blacklisting of the petitioner-institute since there is no such procedure or practice prevailing in the university. The petitioner-institute, however, shall not be permitted to admit the students until the inquiry

proceedings are concluded by the university and subject thereto.. The communication dated 20th/23rd May 2017 made by respondent no.3- university annexed at Exh.'E' stands quashed.

9. Rule made absolute to the extent, specified above. No costs.

(A.M. DHAVAL, J.)

(R.M. BORDE, J.)

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