

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.7706/2017

Jijamata Shikshan Prasarak Mandal's,
Kamlatai College of Architecture,
Madadgaon Takli Kazi
Tq. & Dist.Ahmednagar.
Through its President
Shri Dr.Pramod Uttamrao Shinde,
age__yrs.,occu.___
r/o Aurangabad, Tq. & Dist.Aurangabad.
...Petitioner..

Versus

- 1] The State of Maharashtra,
through the Secretary for
Higher and Technical Education
Department, Mantralaya,
Mumbai.
- 2] Director of Technical Education,
3, Mahapalika Marg,
Maharashtra State, Mumbai.
- 3] All India Council for Technical
Education, 7th Floor,
through its Western
Chandralok Building, Janpath,
New Delhi. Through its
Member Secretary.
- 4] Dr.Babasaheb Ambedkar Technical
University,
Through its Registrar, Lonere,
Taluka Mapan, Dist.Raigadh.
...Respondents...

- 2 -

.....

Shri D.S. Bagul, Advocate for petitioner.

Shri A.V. Deshmukh, AGP for respondent nos.1 & 2.

Shri S.V. Advant, Advocate for respondent no.3.

Shri A.R. Borulkar, Advocate for respondent no.4.

.....

**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] As the issue involved here is of starting
college of Architecture at Madadgaon Takli Kazi Tq. &
Dist.Ahmednagar based upon the permission / approval
granted by All India Council for Technical Education
(AICTE), which is the final authority for granting and
dealing with technical education revolving around
provisions of the All India Technical Education Act,
1987 (for short AICTE Act) and Rules made thereunder.
The law and the judgments with regard to supremacy of
AICTE have a binding effect of approval / sanction
granted by AICTE on / upon the concerned University /

- 3 -

Board / respective State or such other authorities dealing with the education and related institutions in the State / area.

3] This Court in Writ Petition Nos.6259/2017 and 6281/2017, after considering the scheme of AICTE Act and Regulations made thereunder and judgments of the Supreme Court and High Courts dealing with the similarly situated cases, today has granted permission / prayer and allowed such petitioner institution to start and continue with the colleges as prayed / approved by AICTE.

4] Petitioner's application for starting college of Architecture for academic year 2017-18 of intake of 40 students on permanently non grant-in-aid basis on 10.4.2017 has been allowed thereby granted permission / approval so prayed. Respondent – State by communication dated 16.5.2017 also accorded the permission to petitioner accordingly. Though opposed by reply dated 16.6.2017, in view of above settled position of law and facts, in our view, as role of State Government is limited and the fact that they have already granted permission / approval, we are not inclined to accept their opposition to the prayer so made by petitioner.

- 4 -

5] The main contest in the present petition is again by respondent no.4 – University. Basic submission is that the application filed by petitioner for affiliation was in the month of May, 2017. Therefore, there was no occasion for them to complete the formality, as required. There is much force in the contentions raised by the learned counsel appearing for respondent no.4 that the timely action is required to be taken even by the institution for moving and/or taking steps to establish any educational institution / college for the concerned academic session / year.

6] Learned counsel appearing for the petitioner has read and, therefore, various judgments including judgments of the Supreme Court whereby it is reiterated that once AICTE, which is supreme authority in the matter of grant of approval, the other authorities including the University and/or the State permission / affiliation / approval is a mere formality. This Court has accepted this situation in many cases, as referred in the following judgments -

1] *State of Tamilnadu & another v. Adhiyaman Educational & Research Institute & others*
JT 1995 (3) SC 136;

2] *Parshvanath Charitable Trust v. All India Council For Technical Education*
(2013) 3 SCC 385;

3] 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;

4] *Shri Shivaji Education Society, Amravati & Anr. vs. Maharashtra University of Health Sciences & Ors.*
2012(1) Mh.L.J.799;

5] *Jaya Gokul Education Trust vs. Commissioner & Secretary to Government Higher Education Deptt., Thiruvananthapuram and Another*
AIR (2000) 5 SC 231;

6] *Sant Dnyaneshwar V/s. State of Maharashtra*
2006 (9) S.C.1;

7] Order dated 6.1.2016 of the Supreme Court in *Orissa Technical Colleges Association v. AICTE & others*, in **Civil Appeal No.6938/2015**

8] *Mahatma Gandhi Missions Institute, Aurangabad v. State of Maharashtra & others*
2008(5) Mh.L.J., 913; and

9] Judgments dated 21.6.2017 in Writ Petitions Nos.6259/2017 and 6281/2017 passed by this Court.

7] The position of law so declared and announced, therefore, in the present facts and circumstances, though there are one or two judgments cited by the learned counsel for respondents opposing the prayer to say that

- 6 -

such prayers should not be granted at such delayed stage. We have considered those judgments. We have read and referred those judgments and noted that facts and circumstances are totally different. The judgments cited by the learned counsel appearing for the petitioner here directly deal with the importance / need to be given to the supremacy of the approval and sanction of AICTE over the other authorities. We have taken note of the same and granted the relief to the other petitioners, but again also on the foundation of giving importance to AICTE approval and sanction first.

8] Additional factor in the present case is that the concerned Council of Architecture by communication dated 18.5.2017 on application moved by petitioner for Bachelor of Architecture degree course from the academic session 2017-18 issued letter of intent for the same intake for five years. There is no objection, therefore, even from the concerned Council / another authority referring to the degree of Architecture.

9] The role of University and its affiliation is definitely important as it concerns with the examination of students concerned and/or all related aspects.

- 7 -

Respondent no.4 being the University whose affiliation is, therefore, necessary to proceed with the course in question by petitioner institution and, therefore, in the interest of justice and to avoid further complications, at this stage itself we are inclined to direct the University to take all necessary steps as required within the frame-work of Dr.Babasaheb Ambedkar Technological University Act as early as possible and do the necessary things. We permit the University to inspect the premises / institution as early as possible and if defects are pointed out, we also direct the petitioner to remove all deficiencies and defects within shortest possible time. Petitioner is required to take steps including payment of requisite fee and compliances of various requirements so insisted by the University, if any. We are inclined to pass this order basically in view of th approval already granted by AICTE, State Government and also by the concerned Council of Architecture. The infrastructure and every other aspect are ready as the same are within the frame-work of Rules and Regulations so prescribed by the concerned authority. Therefore, in the interest of students at large of the area, we are inclined to grant

the relief so prayed.

10] Learned counsel for the petitioner has also pointed out order passed by this Court in Writ Petition No.5900/2017 dated 8.6.2017 where after considering the similar situation by giving importance to the AICTE permission / approval and there also respondent no.4 University was involved, by mandatory order, this Court directed respondent University to grant affiliation to petitioner for the academic year 2017-18 for the subject.

11] It is made clear that in view of the letter of intent dated 18.5.2017 itself, it is mandatory for the petitioner institution not to admit any students in the course until a letter of approval is received by it from the Council of Architecture though letter of intent is issued for the academic year 2017-18. Therefore, the petitioner to take steps to get appropriate permission / Approval and/or letter before commencement of the session. At this stage, we are inclined to observe that in case of conflict, if any, in view of above observations including the judgments of the Supreme Court, AICTE's approval / decision would prevail.

11] Therefore, taking over all view of the matter

- 9 -

and in view of the orders we have passed in other similarly placed matters and as sufficient case is made out, we are inclined to pass similar order in following terms.

O R D E R

a] Respondent nos.1, 2 and 4 are directed to include the name of the petitioner institution / college for admission process for new Architecture with intake of 80 students for the academic year 2017-18 and allot students through Central Admission Process.

b] Respondent nos.2 & 4 are directed to grant affiliation / permission to petitioner to start college of Architecture for the academic year 2017-18, as approved / sanctioned by the AICTE.

c] It is made clear that petitioner needs to comply with all the formalities, including payment of fees as early as possible and take steps to get appropriate permission / approval from Council of Architecture before commencement of the academic session 2017-18.

d] The Council of Architecture to take inspection, if required and do the needful, as early as possible to avoid and/or delay the commencement of course for the

- 10 -

academic year 2017-18.

e] Respondent no.4 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.

f] Above order is made subject to final order of the Supreme Court as it is stated that the issue of supremacy of AICTE over Pharmacy Council and/or Council of Architecture, is pending.

g] 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.

h] Rule is made absolute accordingly. No costs.

(SUNIL K. KOTWAL, J.)

(ANOOP V. MOHTA, J.)