

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

**CIVIL APPLICATION NO. 7894 OF 2017
IN
WRIT PETITION NO. 4619 OF 2014**

The Marathwada Legal and General
Education Society
Through its Joint Secretary and Another ..APPLICANTS

VERSUS

State of Maharashtra and Others ..RESPONDENTS

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Mr. V.D. Sapkal, Advocate for applicants.
Mrs. M.A. Deshpande, A.G.P. for Respondent Nos. 1 to 3.
Mr. S.S. Thombre, Advocate for Respondent No.4.
Mr. S.S. Deshmukh, Advocate for Respondent No.5.
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**CORAM : ANOOP V. MOHTA &
SUNIL K. KOTWAL, JJ
DATED : 30th JUNE, 2017**

ORDER :

1. Heard learned Counsel for the parties. Applicant No.1 is the registered society imparting education of law in Marathwada region since 1956. Applicant No.2 college is affiliated to Respondent No.4 – University and Respondent No.5 – Bar Council of India.

2. Respondent No.1 – State of Maharashtra by Government Resolution dated 10th January, 1996 implemented grants in aid scheme from the academic

year 1995-96 and granted four divisions to Three Years Course and three divisions to Five Years Course. The Bar Council of India after taking inspection on 04th November, 2014 even recommended extension of four sections (not more than 240 students). The proposal has been accordingly forwarded for the academic year 2017-18 to the Bar Council of India by communication dated 12th November, 2016. Throughout the strength of students is mentioned 240. It is calculated on the basis of 80 students per division, therefore $80 \times 3 = 240$ students. Respondent No.2 – Director of Higher Education of the region has approved 240 students for three year course and 160 students for five years course till this date, even to the grant-in-aid scheme.

3. There was issue with regard to the communication dated 27th May, 2014 issued by Respondent No.4 about the affiliation. The prayer is also made against Respondent No.1 to release grant as per the proposal submitted by applicants on the basis of workload available with applicants. So also, prayer made directing Respondent Nos. 4 and 5 to permit applicants to admit the students for five years old course as per exceeding strength and policy dated 08th November, 2011. This Court, on 23rd June, 2014 itself after hearing the parties permitted applicant – institution to admit students though provisionally, subject to further orders which may be passed in the petition. Direction was also issued to Respondent No.5 – Bar Council of India to consider representation tendered

by applicants. Application was also allowed and the specific challenge by amending is still pending. By order dated 02nd May, 2017, in view of statement made that applicants have removed deficiencies, permitted BCI to examine the compliances, if made. During this period, the interim order/permission granted to admit the students in the respective divisions remained intact.

4. Applicant has been paying regular fees including inspection fees on the basis of original application which they have filed for divisions as well as for the strength of students. On 22nd July 2016, an order is passed in civil application taken out by the applicant. The said application is still pending apart from payments made by applicant so referred in the order.

5. Pursuance to the order passed, this Court provided 240 students of three years course ($80 \times 3 = 240$) and 160 students of five years course ($80 \times 2 = 160$) for the academic year 2016-17 through CET. The intake capacity so restricted refers to the number of students has been followed by applicant. The said ratio is 80:1 per division, whereby in other such institutions it was 60:1. Respondents aware of the order passed by the Court providing 240 students/160 students based upon the divisions. All the concerned have been acting accordingly in view of the order passed by this Court.

6. The State by resolution dated 17th May, 2017 determined fixed intake capacity of 60 students per division. Respondent No.2 accordingly issued circular/communication dated 31st May, 2017 to all the institutions/colleges/universities to fix the intake capacity of students per division, accordingly. Respondent No.4 – university therefore required to follow the same. Certificate from the university is the basic requirement for getting the students in CET process for the year 2017-18.

7. Respondent No.4 – university by the impugned communication dated 12th June, 2017 communicated restricting it to three divisions by reducing the strength 60 x 3 for three years course and 60 x 2 for five years course. Therefore, this application is taken out by the applicants on the foundation apart from submission already made in petition and the orders passed by this Court also on the ground of effect of such certificate/action of university of reduction of strength of students for the year 2017-18.

8. There is no issue with regard to power of State to frame policy as and when it required. There is no issue that the concerned university is bound to follow the same but point still remains that such circular is not at appropriate stage before commencement of session to enable the concerned parties to apply for the impact and implication of circular/action directly on the reduction of strength of students which was never intended at the time of issuing such

circular restricting the ratio 60:2 with regard to reduction of strength is settled. Government and/or the concerned university cannot reduce the strength without following basic procedure of law. The grant to applicant as per government resolution is always based upon the procedure so prescribed. There is nothing on record to show that the government always act on the basis of strength of students and not on the basis of divisions of college and/or institution. The student – teacher ratio and all related aspects involving alongwith strength of students and many other things so provided and it is definitely not on the foundation of division basis. There is nothing on record or even otherwise sufficient to accept the case of respondents that they have entitled even to reduce the strength of students of individual colleges.

9. Therefore at this stage we have to consider the individual case like applicant revolving around direct effect of reduction of students/strength in such circumstances. The challenge to the said resolution raised or not raised is irrelevant at this stage when there is nothing on record to suggest and show and for even by the government that by this move they have decided and/or entitled to reduce the strength of students by following no other procedure of law required. The validity of such resolution and the respondents' action will be decided as and when occasion come and if specific challenge is raised. That itself is not solution to consider applicant's case whereby Respondent No.4 –

university reduce the strength by restricting it to the number of division. Through the concerned respondents – Director of Higher Education knowing fully order passed by the Court even last year recognised 240/160 students as strength for particular course/class. The university, in our view should have taken note of this fact specifically when the petition is pending so also their priority to the proceeding in question.

10. Respondent No.1 – State of Maharashtra has been following order of the Court. Issuance of resolution of reduction of intake capacity in any way cannot be read to mean that order passed by this Court need not be followed at least for the facts and circumstances of the case. Role of university to follow the orders /resolutions cannot be denied but at the same struck pending writ petition and pursuance to order when concerned Director of Education is following the order regarding strength of students as 240/160. There is no norm of reducing the same strength by issuing such certificate. It is made clear that we are not concerned with the same order passed by the university based upon the resolution issued by the State of Maharashtra in other matters. We are concerned with pendency of this petition and the order passed by this Court which need to be respected by all concerned unless the order passed by this Court is vacated and/or revoked. We already noted the order passed by this Court so also related averments and the petition and prayer so made therein.

11. Academic session is already begun. applicant and concerned person if required could have applied for extra division based upon the exceeding permission already granted since so many years referring and restricting 240/160 intake capacity of the students. This is in the background where Respondent No. 5- Bar Council of India has already recommended and noted even in the year 2014 that

“In view of the above facts we are of the opinion that the extension of approval of affiliation of this College for running 3 years LL.B. Course with existing 4 sections (not more than 240 students) for one year up to 2014-15.”

The submission that applicant must apply and get the sanction without which they cannot run extra division is unacceptable for the time being for the purpose of present order which we are intend to pass today. As this will affect not only students of the area but it has cascading effect on the aid/grant in aid or grant based upon the earlier position of record of applicant. This initially to read that applicant is not and should not take any required steps for getting or completing the formalities of approaching for fourth division if required. The students who are already admitted on the basis of order passed by this Court and on first year and or in other class required to be continued unless specific and clear order passed by this Court. At the same struck at the eleventh hour such restriction

could definitely affect the right of management to continue with the strength which is already sanctioned since long i.e. 240/160, so referred above. In such requirement of extra division in the background which in our view, the applicant to take steps at earliest. The concerned respondent to deal with the same in view of the background so referred above and also for the reason that such reduction without following basic procedure is impermissible. There is nothing to show that the State itself has decided to reduce the strength only of applicant's institution, This Court will pass appropriate and final order within all these aspects if necessary referring to the effect of such resolution by overlooking the sanctioned strength of intake capacity of said institution.

12. We are inclined to observe that present applicant has all facilities, infrastructure including teachers and all the requisite machinery and equipments to conduct the courses based upon the intake capacity so already granted. Therefore, in view of the above, interim relief in terms of prayer clause "C". Applicant to take steps as required for extra division and file additional application if required within two weeks. The concerned respondent to deal with the same in accordance with law by following all steps and procedure so required at the earliest.

13. This order is subject to final decision of the order passed in the petition. Liberty is granted to respondents to apply for appropriate order in case

of subsequent deficiencies and/or lacuna if noted after the inspection. Parties to act on the basis of authenticated copy.

SSD (SUNIL K. KOTWAL, J.)

(ANOOP V. MOHTA, J.)