

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 84 OF 2017

VIKAS PARISHAD also known as
PEDNE TALUKA VIKAS PARISHAD,
a Society registered under
the Societies Registration
Act, 1860, having its Office
at Mandre College of Commerce,
Economics and Management, Dev
Mandrekar Nagar, Mandre,
Taluka Pernem-Goa, represented
by its Chairman, SHRI RAMAKANT
KHALAP, of major age, Indian
National, resident of Altinho,
Mapusa, Bardez-Goa and another.

... Petitioners

V e r s u s

- 1) GOA UNIVERSITY, through
its Registrar, having
Office at Taleigao
Plateau-Goa
- 2) STATE OF GOA, through
its Chief Secretary,
having office at
Secretariat, Porvorim,
Bardez-Goa
- 3) THE UNDER SECRETARY
(HIGHER EDUCATION),
Government of Goa, having
Office at Directorate of
Higher Education, Junta
House, 2nd Lift, 5th Floor,
Panaji – Goa.
- 4) THE DIRECTOR OF HIGHER
EDUCATION, Government of
Goa, having Office at
Directorate of Higher
Education, Junta House,
2nd Lift, 5th Floor,

Panaji – Goa.

... Respondents

Mr. S. G. Desai, Senior Advocate with Mr. Parag Rao, Ms. Ketki Pednekar and Ms. Agnetha Lobo, Advocates for the Petitioners.

Mrs. A. Agni, Senior Advocate with Ms. A. Kamat, Advocate for the Respondent no. 1.

Mr. S. D. Lotlikar, Advocate General with Mr. D. Lawande, Addl. Advocate General with Mr. A. Gomes Pereira, Addl. Government Advocate appearing for the Respondent nos. 2 to 4.

Coram :- **F. M. REIS,**
 NUTAN D. SARDESSAI, JJ.

Reserved for Judgment on : **24th February, 2017**
Judgment Pronounced on : **4th April, 2017**

JUDGMENT (Per F. M. Reis, J.)

Heard Mr. S. G. Desai, learned Senior Advocate appearing for the Petitioners, Mr. S. D. Lotlikar, learned Advocate General appearing for the Respondent nos. 2 to 4 and Mrs. Agni, learned Senior Advocate appearing for the Respondent no. 1.

2. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the Respondents waive service.

3. The above Petition, inter alia, prays for an appropriate writ or direction to quash and set aside the communication dated 01.04.2016;

striking down the condition to obtain No Objection Certificate from the State Government as provided in SC-1 being ultra vires the Goa University Act, 1984; for a writ of mandamus or a writ in the nature of mandamus directing the Respondent no. 1 to grant affiliation to the First Year B.Com Degree course to the Petitioners College for the Academic Year 2016-17; and also for a writ to quash and set aside the communication dated 08.06.2016 as well as for a writ or direction to quash and set aside the communication dated 21.06.2013. An ad-interim Order dated 31.05.2016 was passed by the learned Vacation Judge, in terms of Clause (G) to the Petition, thereby pending the hearing and final disposal of the Petition, the Petitioners were permitted to admit the students to the First Year B.Com Degree Course for the said year 2016-17 and it was made clear that neither the Petitioner nor the students who may be admitted can claim any equities based on such admission.

4. Briefly, it is the case of the Petitioners that the Petitioners started the Higher Secondary College in 1980 at Mandrem in Pernem Taluka and further that apart from the Petitioners, there are three other Higher Secondary Schools in Pernem Taluka and one Higher Secondary School in Siolim in Bardez Taluka which are feeder Higher Secondary Colleges for obtaining Degree Education in Pernem Taluka. It is further contended that considering the feeder Higher Secondary Schools in Pernem Taluka, the Petitioners sought affiliation on 26.09.2011 from the Respondent no. 1 to

start the Degree College for Arts, B.Com., BBA and Vocational Courses. The Petitioners also applied for NOC from Respondent no. 4. It is further contended that the Respondent no. 3 granted NOC to the Petitioners College on 14.03.2012 to start BBA Course on self finance basis and informed that the management may submit proposal for Grants in Aid after five years. Thereafter, on 17.07.2012, the Respondent no. 3 granted NOC for starting of B.Com Course on Grants in Aid basis to the Petitioners College. The Respondent no. 1 accordingly on 30.07.2012, granted affiliation to the Petitioners College to conduct B.Com Graduation Degree Course for the Academic Year 2012-13 and accordingly the Petitioners College started imparting education to the First Year B.Com students for B.Com Degree from 30.07.2012. Thereafter on 04.06.2013, the affiliation was extended to the Second Year B.Com and continued affiliation for the First year B.Com programme for the Academic Year 2013-14. In the meanwhile on 21.06.2013, the Respondent no. 3 informed the Petitioner no. 1 that the Administrative approval for starting of B.Com Course on Grants in Aid basis stands withdrawn as the Finance Department had not agreed to the said proposal. The Respondent no. 3 informed the Petitioners that pursuant to the Petitioners' request for Grants in Aid, as the Petitioner College had a strength below 100, the Petitioners College is not eligible to receive Grants as per pattern of Assistance for the Academic Year 2013-14. It is further the case of the Petitioners that before granting affiliation for the Academic Year 2014-15, the officials of the Affiliation Inspection Committee of the

Respondent no. 1 records appreciating and satisfactory comments about the infrastructure of the Petitioners College. The Affiliation was extended for the Third Year B.Com on 09.05.2014 and continued for Second Year and First Year of B.Com Course for the Academic Year 2014-15 by the Respondent no. 1. Thereafter on 18.05.2015, the Respondent no. 1 continued the Affiliation to the B.Com Programme for the Academic Year 2015-16. Subsequently, according to the Petitioner on 22.12.2015, the Respondent no. 3 inquired about the current affiliation status of the College of the Petitioners. Around 15.02.2016, the Respondent no. 3 seeks for a Affiliation Inquiry Reports since 21.06.2013 in respect of the Petitioners College from the Respondent no. 1. The Respondent no. 1 through his Deputy Registrar on 11.03.2016, furnishes such Report. It was also stated that the contents of the said letter dated 21.06.2013 were brought to the notice of the Affiliation Inquiry Committee and that the Affiliation Inquiry Committee was apprised of the correspondence exchanged between the College and the State Government. It is further contended that on 01.04.2016 the Respondent no. 1 informed the Petitioners that the Academic Council has decided not to grant continuation of Affiliation for the Academic Year 2016-17 unless the Petitioners obtained a fresh NOC from the Government to admit students for the First Year B.Com for the Academic Year 2016-17. A Representation was made to the Vice Chancellor on 18.04.2016 and the Petitioners were called upon to make a representation before the Academic Council on behalf of the Petitioner no. 1 which was made on 29.04.2016. But, however, being

aggrieved by the decision to refuse the Affiliation for the Academic Year 2016-17, the Petitioners filed the above Petition, inter alia, contending that the Communication dated 01.04.2016 is without jurisdiction and is liable to be quashed and set aside. It is also contended that such communication is also violative of Article 14 of the Constitution of India.

5. Taking note of the stand being taken by the Respondents, the Petitioners amended the Writ Petition, inter alia, contending that during the pendency of the Petition, the Petitioners were served with a communication dated 08.06.2016 by the Respondent no. 1 stating therein that the Academic Council in its meeting held on 20.05.2016 has taken its initiative not to grant continuation of Affiliation for the First Year B.Com Course for the Academic Year 2016-17 and contended that such communication is wholly without jurisdiction being issued in gross violation of the principles of natural justice. It was further contended that the Communication dated 21.06.2013 was not a withdrawal of the NOC but denial of Grant to the Petitioners College. It is further contended without prejudice that the withdrawal of NOC by communication dated 21.06.2013, is without affording any hearing to the Petitioners or without issuing any show cause notice and, as such, stands vitiated as also being not supported by any reasons whatsoever. As such, the Petitioners sought for the reliefs to quash the said Communications as well as the one dated 21.06.2013.

6. The Respondent no. 1 filed a reply inter alia contending that the procedure for Grant of Affiliation is set out in detail in Statute SC-I. It is further contended that as per the said Statute S-1, only after receipt of the No Objection, the Affiliation Inquiry Committee carries out the inspection of the facilities and examines the proposal for commencement of a new College in detail. It is further contended that Clause 4 of Statute SC-1 cannot be interpreted to contend that it is the obligation of the Executive Council of Goa University to seek the no objection from the Government for starting a new college. It is further pointed out that as far as the BBA Course is concerned, it was never started by the Petitioners. It is also pointed out by the said Respondent that the Administrative Approval granted in favour of the Petitioners was withdrawn vide letter dated 21.06.2013. It is also stated that from the year 2013 till the filing of the Petition in May 2016, the Petitioners neither challenged the decision dated 21.06.2013 nor even sought clarification as to the withdrawal whether it was limited to the release of Grant in Aid to the Petitioners. It was also pointed out that after the approval was withdrawn, the Affiliation could not have been continued as per the Statute SC-V but, however, the Chairman of the Petitioners' Society went on requesting to the Affiliation Inquiry Committee as also to the University that correspondence was being exchanged between the Government and the Petitioners and the Administrative Approval on Grant in Aid basis would be received by the Petitioners from the Government. It was further pointed out that the letter dated 21.06.2013 could not be interpreted in the manner the

Petitioners wants to project nor the same was interpreted by the University only to mean that only the Grant in Aid to the Petitioners was being refused. It was further pointed out that hearing was given to the Petitioners on 29.04.2016 and this has been squarely admitted at Para 12 of the Petition. It is also pointed out that the decision taken by the Respondents is fair and not in breach of the principles of natural justice as contended by the Petitioners. It is also pointed out that in view of Statute SC-1 (IV), it provides that for continuation of extension of Affiliation, the same procedure as provided for starting of a college applies. The allegations made by the Petitioners against the Respondents has been denied by the Respondent no. 1.

7. The Petitioners filed an Affidavit in Rejoinder. It is further pointed out that in view of the ad-interim Order passed by this Court, the Petitioners have given admission to a total of 33 students in Mandrem College of Commerce. It was further pointed out that extension of Affiliation as reflected in the Communication dated 14.07.2014, inter alia, clearly establishes that the Respondents have proceeded on the basis that by the Communication dated 21.06.2013, the NOC granted was not withdrawn. It is also pointed out that it is the obligation of the University to get the NOC from the State Government. It is also pointed out that the Respondent no. 1 itself treated the NOC dated 17.07.2012 to be subsisting and kept on extending the Affiliation for the B.com Course.

8. The Respondent nos. 2 and 3 have also filed their affidavit in reply. It is pointed out that the students who have been admitted pursuant to an interim Order passed by this Court, could accommodate in the Government College of Arts and Commerce at Virnoda, Pernem, which has the requisite capacity for the Academic Year 2016-17. It is further contended that the Petitioners themselves applied to be provided Grants by the Government for the First Year itself and, therefore, the contention now raised by the Petitioners that it is the obligation of the Respondent no. 1-University to obtain the NOC from the Government is totally misplaced. It is also pointed out that since inspection, the Respondents pointed out that they were not in a position to run the Institution without the Grants being made available to the Respondents by the Government which request was not accepted after being examined by the Directorate of the Higher Education as there was already a College in Pernem which was fully managed by the Government of Goa. It was further pointed out that on an assumption that 230 Commerce students of Class XII Board Examination, Commerce students had cleared in Pernem Taluka, the Government decided to grant conditional approval for Commerce College only to the Petitioners with a direction that the Petitioners may seek affiliation from the University. It is further pointed out that a conditional approval was granted provided maximum capacity of 60 students from the Academic Year 2012-13 were accepted on Grant in Aid basis. It was further pointed that the Petitioners College was not able to muster up a total of 100 students as far as the

College was concerned for the First Year and the Second Year till the date of withdrawal of the Administrative Approval and for non fulfillment of the condition, by Communication dated 21.06.2013, the approval was withdrawn. It is also pointed out that as far as facilities are concerned, it is within the exclusive jurisdiction of the Goa University-Respondent no. 1 herein. It was also pointed out that administrative approval was a conditional one and as the condition was not fulfilled as Grants were refused to the Petitioners, the Respondent no.3 were entitled to withdraw the NOC.

9. A rejoinder has also been filed by the Petitioners disputing the contentions made in the affidavit in reply filed by the said Respondents and, inter alia, disputed that it was a conditional NOC granted by the said Respondents.

10. Mr. S. G. Dessai, learned Senior Advocate appearing for the Petitioners, has minutely taken us through the relevant provisions and pointed out that though the Petitioners purported to withdraw the NOC by its communication dated 21.06.2013, the Respondent no. 1-University granted Affiliation in the subsequent years on the assumption that such alleged withdrawal was never acted upon or withdrawn. Learned Senior Advocate has taken us through the said Communication to point out that there are no conditions imposed therein to claim that such NOC was subject to grant of Grant in Aid. It is further pointed out that on perusal of the decision of the

concerned Minister at the relevant time, it clearly shows that NOC was granted to start the College without any condition and the alleged Communication by the Respondent no. 3 is contrary to the decision as reflected in the material placed on record. The learned Senior Advocate further pointed out that the Respondent no. 1 in total breach of the principles of natural justice, has issued the impugned communication dated 01.04.2016 withdrawing the Affiliation without giving any opportunity to the Petitioners of being heard. It is further pointed out that based on a communication from the Respondent no. 3 on malafide motives and in colourable exercise of powers, the Respondent no. 3 sought an inquiry Report about any Affiliation. It is further pointed out that as far as the running of the College and the infrastructure facilities are concerned, the Inspection Committee, had found the infrastructure facility for the purpose of advancing the academic studies provided by the Petitioners were within the prescribed standards and the facilities were commendable. It is further pointed out that the NOC issued by the Respondent no. 3 is essentially to consider whether such College is intended to be run in terms of the statutory provisions and there is no illegality of such building offered by the Petitioners. It is further pointed out that the NOC granted pursuant to the letter dated 17.07.2012 is still in place and the alleged withdrawal on 21.06.2013 is ultra vires and a nullity as, in any event, such decision was taken in breach of the principles of natural justice. Learned Counsel has thereafter taken us through the said Communication to point out that there are no valid reasons nor any

opportunity given to the Petitioners to meet the allegations therein. It is further submitted that even assuming the Grant in Aid has been refused, it is not open to the Respondent no. 1 nor the Respondent nos. 3 and 4 to arbitrarily withdrawing the NOC without giving the Petitioners an opportunity of being heard. Learned Senior Advocate has thereafter taken us through the notings in the relevant file to point out that the Administrative Approval granted was unconditional and the Communication by the Director of Higher Secondary is not in consonance with the final decision taken in connection with the College of the Petitioners. It is further pointed out that the Inspection Committee visited the College and found that the infrastructure provided by the Petitioners is commendable and, as such, there is no reason to refuse the Petitioners to proceed with the B.Com course. Learned Senior Advocate has taken us through the relevant provisions of the Statute to point out that it is the obligation of the University to get the permission of the State Government and, in the present case, the NOC was itself in place and it was not open to the Respondent no. 1 to arbitrarily discontinue the Affiliation to the B.Com course provided by the Petitioners. Learned Senior Advocate further pointed out that the impugned decision taken by the Respondents is in gross disregard to the future of the students studying B.Com in the College of the Petitioners whose future would be gravely jeopardised in case the impugned Orders are allowed to stand. Learned Senior Advocate further pointed out that the impugned decisions smack with malafides and bias to the Petitioners. It is further pointed out that despite bringing to the notice of

the Affiliation Committee the purported Communication dated 21.06.2013, the Affiliation Committee proceeded to grant Affiliation for the next succeeding years which was sought to be revoked arbitrarily by the impugned Communication dated 01.04.2015. Learned Senior Advocate as such pointed out that the impugned Communication is in breach of the principles of natural justice and as such ultra vires the Statute and deserves to be quashed and set aside. It is further submitted that in any event and without prejudice as the alleged withdrawal dated 21.06.2013 is without giving a hearing to the Petitioners, it stands vitiated and deserves to be quashed and set aside.

11. On the other hand, Shri S. D. Lotlikar, learned Advocate General, appearing for the Respondent nos. 2 to 4, has vehemently argued that as far as providing the infrastructure and the competence of the staff to provide the academic courses, it comes within the jurisdiction of the University. It is further pointed out that as such the State Government is concerned to ensure that no injustice would occasion to the students in the vicinity where the Petitioners have sought permission to start the B.Com course. Learned Advocate General further pointed out that NOC granted to start the College was conditional as, according to him, it clearly depended upon the approval of Grants to the Petitioners by the State Government. It is further pointed by the learned Advocate General that as the Finance Department had refused to grant Grant in Aid as, according to him, it did not

meet the strength required to be entitled for such Grant in Aid, the Government was justified to withdraw the NOC vide Communication dated 21.06.2013. Learned Advocate General further pointed out that as the condition has not been satisfied, it is within the powers of the State Government to withdraw the NOC granted to the Petitioners. It is further pointed out that the hearing, if any, would be an exercise in futility as, according to him, as the condition to get Grant in Aid was not available to the Petitioners, there is no other justifiable reason to allow the Petitioners to run the course without Grant in Aid from the State Government. Learned Advocate General pointed out that the Petitioners' Chairman himself held out to the State Government that they were in precarious financial condition to start a course without Grants and, as such, as the Petitioners did not meet the eligibility for Grant in Aid from the State Government, the Respondents-State Government were justified to withdraw the NOC. Learned Advocate General further pointed out that once the NOC has been withdrawn, the question of continuing with the Affiliation by the University would not arise at all. Learned Advocate General further pointed out that the Affiliation can be granted provided that the NOC is in place and in the present case as such NOC had been withdrawn, the University is justified to pass the impugned communication dated 01.04.2016 and the subsequent Order by the Affiliation Committee dated 20.05.2016. Learned Advocate General further pointed out that in fact the Petitioners had also sought permission to start the BBA course which was granted without Grant in Aid but, however, the Petitioners

did not start such course which would itself suggest that the Petitioners are not in a position to start any course without Grant in Aid from the Government. Learned Advocate General further pointed out that the decision taken by the Respondents was for the benefit of the students of the Pernem Taluka as, according to him, there is a Government College in the vicinity of the Petitioners' College which would accommodate all the students of the B.Com course. Learned Advocate General further pointed out that as such the Respondent-State Government took a conscious decision that the NOC has to be withdrawn as the Petitioners were not in a position to meet the condition nor in a financial position to run the College. Learned Advocate General further pointed out that there is no infirmity in the Orders impugned in the present Petition and as such the Petition be rejected.

12. Mrs. Agni, learned Senior Advocate appearing for the Respondent no. 1, pointed out that though the Petitioners had proceeded with the Affiliation for two successive years after the Communication withdrawing the NOC on 21.06.2013, it was in good faith that the Affiliation was continued as, according to the learned Senior Advocate, the Chairman of the Petitioner had held out that the withdrawal of the NOC would be withdrawn by the State Government. Learned Senior Advocate further pointed out that the contention of the Petitioners that it is the obligation of the University to obtain the NOC from the State Government is totally misplaced as SC-1 of the Statute clearly provides the procedure to be followed for such

NOC by the concerned College. Learned Senior Advocate further submits that as the Respondent no. 3 communicated and reminded the Respondent no. 1 that the approval has been withdrawn and the Respondent no. 1 did not have any option than to withdraw the Affiliation after giving the Petitioners an opportunity of being heard. Learned Senior Advocate has thereafter taken us extensively through the Statute SC-1 and pointed out that action taken by the Respondent no. 1 was in accordance with the relevant statutes governing such situations. Learned Senior Advocate further accepts the position that there is no grievance raised by the Inspection Committee with regard to the infrastructure and the Academic curriculum provided by the Petitioners for the B.Com course started by the Petitioners. Learned Advocate General as such submits that there is no breach of the principles of natural justice as contended by the Petitioners and, as such, the Petition deserves to be rejected.

13. We have considered the submissions of the learned Senior Advocates and we have also gone through the records. On perusal of the notings which lead to the decision to grant the NOC to the College and condition as reflected in the Communication dated 17.07.2012, we find that the notings in the file, prima facie, do not disclose any such condition as contended by the Respondents. But, however, we do not intend to proceed to examine the rival contentions as far as such aspect is concerned as we intend to examine whether the impugned Communication dated 21.06.2013

withdrawing the NOC granted to the Petitioners stands vitiated for the breach of the principles of natural justice. In this connection, it is not in dispute that the communication dated 21.06.2013 would not only affect the civil rights of the Petitioners to run the College but also the students who were already admitted when the Respondent no. 1 had duly approved the Affiliation to start the B.Com course in the College of the Petitioners upto 3rd Year B.Com. It is not in dispute that no hearing was given to the Petitioners before such decision was taken by the Respondent no. 3 withdrawing the NOC granted to the Petitioners to start the B.Com course. It is also not in dispute that no show cause notice was given to the Petitioners before passing such Order. It is the case made out by the Petitioners that the Petitioners could proceed with the B.Com course without Grant in Aid from the Government. As already pointed out herein above, there is no grievance raised by the Respondent no.1 about the infrastructure facilities provided by the Petitioners for the B.Com course. The phrase '*natural justice*' is not capable of a static and precise definition. But, however, a duty to act fairly i.e. in consonance with the fundamental principles of substantive justice, is generally implied irrespective of whether the power conferred on a statutory body is administrative or quasi-judicial. The *audi alteram partem* rule is a very flexible, malleable and adaptable concept of natural justice. To adjust and harmonise the need for speedy compliance with the obligations to act fairly, it can be modified and the measure of its application cut short to reasonable proportion depending on the exigencies of the situation. Thus, in the ultimate

analysis, the question as to what extent and in what measure this rule of fair hearing will apply at the pre-decisional stage will depend upon the degree of urgency, if any, evident from the facts and circumstances of the particular case. Where natural justice is implied, the extent of its implication and the nature of the hearing must vary with the statute, the subject and the situation. There cannot be any doubt whatsoever that the *audi alteram partem* is one of the basic pillars of natural justice which means no one should be condemned unheard. These principles cannot be put in any straitjacket formula. The same principles may not apply to a given case unless prejudice is shown.

14. In the present case, as pointed out herein above, as the consequences of the withdrawal of the NOC would have civil effects on the rights of the Petitioners to run the College and affect a large number of students who were already studying in the College of the Petitioners, we find that the Communication dated 21.06.2013, stands vitiated for failure to give a hearing to the Petitioners. On a perusal of the Communication dated 17.07.2012, the NOC issued to the Petitioners to start the B.Com course, specifies four conditions on Grant of Aid basis. Nevertheless, the Administrative Approval brought to our notice does not show when such conditions were intended to be imposed. No doubt, on 23.05.2013, the Government did not agree to grant Grant in Aid to the B.Com Degree College by accepting a negative recommendation of the Principal Secretary

(Finance). But, what is to be noted is that thereafter on 04.06.2013, the Respondent no.1 granted Affiliation for the Second Year B.Com and continued for the First Year B. Com course. A letter dated 14.07.2014 shows that the State Government informed the Petitioner Society that since B.Com College had a strength of less than 100, it was not eligible to receive Grants and, therefore, the Grants for the Academic Year 2013-14 have not been paid to the Petitioners. This, prima facie, would suggest that the contention of the Respondents that the NOC to run the College has been withdrawn, as the Grant in Aid was refused is not justified looking into the administrative approval. In fact, for the year 2015, the Petitioners produced material to show that the Petitioners Society is listed in the List of Colleges issued by the Director of Higher Secondary. In such circumstances, without going into the contentions of the Petitioners that the NOC issued to the Petitioners by the Communication dated 17.07.2012 was not dependent upon eligibility for Grant in Aid, we are of the considered opinion, that the Respondents were not justified to pass the impugned communication dated 21.06.2013 without giving the Petitioners an opportunity of being heard. On this ground alone, the Order dated 21.06.2013 stands vitiated and deserves to be quashed and set aside. Consequently, the communication withdrawing the Affiliation dated 08.06.2016 based on the said withdrawal of the NOC by the Respondent no.1 also is unsustainable and deserves to be quashed and set aside.

15. The contention of the learned Advocate General that such

hearing would be an exercise in futility as the condition upon which the NOC was granted has not been satisfied, cannot be accepted. As already pointed out herein above, based on such NOC, affiliation was obtained from the Respondent no. 1, the students were already admitted and in fact the Affiliation was renewed up to the date when the Petition was filed allowing the Petitioners to admit students even up to Third Year B.Com Course. Failure to give such show cause notice or a hearing makes the impugned action of the Respondent no. 3 arbitrary as such decision has been taken without examining whether the Petitioners could proceed with the B.Com Course without the Grants and consider the future of the students who were already admitted to the college. Apart from that, the admitted position is that the Petitioners have been running the College even though Grants were not released from the year 2013-14 upto the date of the filing of the above Petition in the year 2016 when the impugned Order revoking the Affiliation was issued based on the communication of the Respondent no. 3. On a perusal of the said impugned Communication, we find that the aspects with regard to the future of the students who were already studying for the B.Com Course which have not at all been considered whilst taking the impugned decision.

16. The contention of the Petitioners and the Respondents as to whether the NOC granted to the Petitioners is conditional or not are matters

which are left open to be examined on its own merits after giving the Petitioners a hearing in accordance with law. Admittedly, in the present case, even before the impugned Communication dated 21.06.2013, no show cause notice was issued to the Petitioners to put forward their stand with regard to the running of the B.Com course and the effect on the future of the students who had already been admitted pursuant to the Affiliation granted by the Respondent no. 1.

17. The Apex Court in a Judgment reported in **(2011) 15 SCC 543** in the case of **Shivagangagiri Vidyabiruddi Samste vs. State of Karnataka & Ors.** has observed at Paras 5, 6 and 7 thus :

“5. Firstly, it has to be noticed that there was no delay or laches on the part of the appellant in filing the writ petition. The Order dated 21-9-2002 was not passed after giving an opportunity to the appellant. Secondly, when the appellant came to know about it, he gave representations and the matter was under consideration and in fact a communication was addressed on 14-12-2004 by the Director, Pre-University Education for revalidation of the Order dated 1-1-2002. It was evident that the appellant was waiting issuance of appropriate orders in pursuance of it. Only when the Government Order dated 1-1-2002 was not revalidated in spite of the communication dated 14-12-2004, it filed the writ petition. Hence,

dismissal on the ground of delay and laches cannot be sustained.

6. Valuable rights had accrued to the appellant by reason of the Order dated 1-1-2002 which revived the earlier Order dated 3-8-1985 thereby granting permission to the appellant to establish the Junior College from 1985-1986. Such an order, obviously, could not be withdrawn without any show-cause notice or giving an opportunity to the appellant to show cause. In fact, having regard to the provisions of the Karnataka Education Act, 1983, an opportunity to show cause is required before withdrawal of any permission. In the circumstances, the Order dated 21-9-2002 being opposed to the principles of natural justice cannot be sustained. The appellant has to succeed on this limited ground.

7. We, therefore, allow this appeal, set aside the order dated 15-6-2010 of the Division Bench and the order dated 6-6-2007 of the learned Single Judge and allow the writ petition filed by the appellant before the High Court and quash the Order dated 21-9-2002. As a consequence, the Order dated 1-1-2002 will continue to be in force.”

18. Though, it is well established that a right to start a Educational Institution is a fundamental right guaranteed under Article 19(1)(g) of the Constitution of India, but it can be controlled by restrictions which are in the

interest of the general public and are reasonable. In that sense, it is not an absolute right as such. But, however, by withdrawing the NOC without giving an opportunity to the Petitioners of being heard or a show cause notice, led to a situation where the Petitioners have been deprived of providing the students of an opportunity to study in their Educational Institution. The effect of this decision has caused great hardship to the Petitioners as well as to the students and, as such, the impugned Order revoking the NOC stands vitiated for the breach of following the principles of natural justice. The conduct of Respondent no. 1 is also not at all appropriate as the Affiliation was renewed and the Petitioners were permitted to admit students only on the basis of an alleged oral assurance of the Chairman of the Petitioners-Institution. This conduct does not augur well for the future of the students who were studying in the Educational Institution of the Petitioners. In such circumstances, without going into the other contentions of Mr. S. G. Desai, learned Senior Advocate appearing for the Petitioners on merits, we find that the impugned communication dated 21.06.2013 stands vitiated for failure to comply with the principles of natural justice and is arbitrary for the reasons stated herein above

19. As such, we pass the following :

ORDER

(I) The impugned Communication dated 21.06.2013 and the withdrawal of the Affiliation dated 08.06.2016 are quashed and set aside.

(II) The Respondent nos. 2 and 3, if so advised, shall give an opportunity to the Petitioners of being heard before taking any decision with regard to the withdrawal of NOC granted on 17.07.12 in accordance with law.

(III) All contentions of both the parties with regard to their respective stands are left open in the light of the observations made herein above.

(IV) Rule is made absolute in the above terms with no Orders as to costs.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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