

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO.444 OF 2013
ALONGWITH
NOTICE OF MOTION NO.407 OF 2016
ALONGWITH
CHAMBER SUMMONS NO.114 OF 2014
ALONGWITH
NOTICE OF MOTION NO.280 OF 2014
IN
WRIT PETITION NO.444 OF 2013**

**St. Francis Institute of
Technology (Engineering College)
Through its Director**

Bro. Tom Melchior and another

..Petitioners/Applicants

Versus

The Registrar,

University of Mumbai and others

..Respondents

**Mr. S. C. Naidu i/by M/s. C. R. Naidu & Co., Advocate for the
Petitioners in Writ Petition and for Applicants in NMW No.407 of
2016, CHSW No.114 of 2014, NMW No.280 of 2014.**

**Mr. Asadullah Shaikh i/by Mr. Rui A. Rodrigues, Advocate for
Respondent No.1.**

**Mr. N. V. Loya i/by Mr. Abhijeet A. Joshi, Advocate for Respondent
No.2 – AICTE.**

Mr. L. T. Satelkar, AGP for Respondent No.3 – State.

CORAM : B. R. GAVAI &

B. P COLABAWALLA, JJ.

DATE : 20th DECEMBER, 2017

PC.

1] Rule. Rule made returnable forthwith. Heard by consent.

2] The Petitioners have approached this Court praying that

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communication/circular dated 10th February 2012, vide which the Respondent University has intimated that the Rules regarding selection committee, selection procedure and eligibility criteria/qualifications and Equivalence for teaching posts in the disciplines, coming under the purview of All India Council for Technical Education (“AICTE” for short), which are enclosed as Appendix 'A' to the circular are revised. It is the basic grievance of the Petitioners that the procedure prescribed in the Annexure annexed to the said circular are not applicable to the Petitioners.

3] The Petitioner is a private, self-financed educational institution, recognized by the Respondent – University as such on 23rd July 1999. The Petitioners, subsequent to their establishment, have employed various faculty members after following the selection process as prescribed by the Rules framed by them, which were submitted to the Respondent – University alongwith the application for affiliation. It is the contention of the Petitioners that the manner and mode of selection and appointment of the Principal as well as teaching staff is governed by the statutes 413 to 417. It is submitted that though the said statutes prescribe for appointment and selection in other colleges, in so far as the Engineering and Technical Colleges are concerned, the Vice Chancellor has issued direction under Section 11(6) of the Bombay Universities Act,

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1974. It can be seen that the paragraphs 6 to 9 are pari-materia with the statutes 413 and 417.

4] The Petitions are opposed on behalf of the University. It is submitted that the Rules which are annexed to the circular dated 10th February 2012 are issued, so as to bring selection process in conformity with the Regulations of AICTE. It is submitted that it is necessary that the advertisement seeking applications for faculty members is first required to be approved from the University. It is the contention of the Respondent that since advertisement is not submitted by the Petitioners to the University, the same could not have been approved.

5] It is to be noted that the Division Bench of this Court while considering the submissions made on behalf of the Respondent – University on 5th March 2013 has observed thus :-

“1. The issue that arises in this matter is the validity of the impugned rules and in particular rules 3 and 4 issued by the University of Mumbai circular dated 10.02.2012. The circular states that the rules have been purportedly made in view of a notification of the AICTE dated 22.01.2010. The rules do not appear to have been made in conformity with by the Maharashtra Universities Act, 1994 and in particularly section 115(2)(xii) read with section 52 thereof. If that be so, statutes 412 and 417 framed by the University of Bombay under the Bombay University Act, 1974 would continue to remain in operation. Prima-facie these status interi-alia entitle the minority managements

covered by the provisions of Article 30(1) of the Constitution of India to form their own selection committee for the principals and teachers in 1994.

2. In the circumstances, the petitioners shall be entitled to appoint the principal and teachers on the basis of the existing system. Such appointments however, are made expressly subject to further orders in this writ petition. The petitioners shall inform the appointees of this order. Neither the petitioners nor any appointees shall be entitled to claim any equities on the basis of this order.”

6] We find that, prima-facie, view taken by the Division Bench in its order dated 5th March 2013 needs to be reiterated. Perusal of the directions issued by the learned Vice Chancellor under Section 11(6)(b) of the erstwhile Bombay University Act, would reveal that the directions issued by the Vice Chancellor, for making the service conditions applicable to the colleges in the faculty of technology, are pari-materia with the statutes which provides for qualification, selection procedure etc. of the Principals and teachers in the other colleges. It would be relevant to refer to paragraph 9 of the said directions which are in pari-materia with statute 417 of the Bombay University Act.

“9. There shall be a selection committee for making recommendations to the Governing Body for appointment of teachers in a college. Every Selection committee for selecting teachers for appointment to the post of Engineering/Technology subjects shall consists of the following persons:-

a. Chairman of the Government Body of the College or

his nominee who shall be the member of the Government Body (who shall be the Chairman of the selection committee).

- b. Director of Technical Education (M.S.) or his nominee not below the rank of Joint Director.
- c. Assistant Educational Adviser (Technical), Ministry of HRD, Western Region or his nominee.
- d. Nominee of the Vice-Chancellor.
- e. Two experts from the panel of experts prepared by ATCTE and approved by the Director of Technical Education (The number of experts shall be three in the case of selection for appointment to the post of Professors).
- f. The Principal of the college (who shall act as Member Secretary of the Committee)

Every selection committee for selecting teachers for appointment to the post in subjects other than Engineering/Technology subjects shall consist of the following persons:

- i. Chairman of the Governing Body of the college or his nominee (who shall be Chairman of the Selection committee).
- ii. One nominee of the Vice-Chancellor.
- iii. One expert to be nominated by the University.
- iv. Director of Technical Education (M.S.) or his nominee not below the rank of Joint Director.
- v. Principal of the college (Member Secretary of the

Selection Committee).

- vi. The Head of the Department of the College in the subject concerned and where there is no Head of the Department, the senior most teacher in the subject.

Provided, however, that colleges established and administered by minority management covered by the provisions of Article 30(1) of the Constitution of India may form their own selection committees and the above provisions will not apply in their case.”

(emphasis supplied)

7] It could thus be seen that the directives and statutes framed by the University itself provides that the minority management covered by the provisions of Article 30(1) of the Constitution of India are entitled to form their own selection committees and the above provisions will not apply in their case. It is not in dispute that the Petitioner No.1 is the minority institute within the meaning of Article 30(1) of the Constitution of India. It is further to be noted that the Rules which are framed by the Petitioner No.1 have been submitted by the Petitioner No.2 to the Respondent – University prior to applying for affiliation as private self-financed educational institute and therefore the Petitioner was entitled to have its own selection process.

8] It is not anybody's case that the faculty members appointed by the Petitioner No.1 institute are appointed de-hors the provisions

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contained in the Rules that are framed by the Petitioner No.1 which were submitted to the Respondent – University while applying for affiliation.

9] We are of the considered view that in view of the Rule 9 which is pari-materia to the statute 417, the Petitioner No.1 was entitled to have its own selection process. In so far as the Rules on which the Respondent No.1 – University relies are concerned, they have not been translated into statute. The statutes framed by the University will have force of subordinate legislation. If there is conflict between the circular issued by the University and the statutes which are framed by the University, the statutes would prevail.

10] The Respondent – University has not been in a position to point out any statute, which requires a prior approval of University before issuance of advertisements for seeking application from the candidates. We are therefore of the considered view that the proposal for grant of approval by the University on the ground that the draft advertisement was not approved, would not be sustainable.

11] In any case, it is to be noted that the Petitioner No.2 institute is also required to obtain year to year permission for extension of approval from AICTE. If there are any deficiencies, the AICTE can always

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point out such deficiencies and unless such deficiencies are removed it is common knowledge that the AICTE does not grant extension of approval.

12] Therefore in our considered view, the communication dated 10th February 2012, is not sustainable in law.

13] In the result, the Petition is allowed.

I) The action of the Respondent – University, in not considering the proposal for grant of approval to the appointment of the faculty members of the Petitioners, on the ground that the draft advertisement is not approved is held to be illegal.

II) The Respondent – University is directed to consider/accept the proposals to be submitted by the Petitioners for grant of approval to the appointment of the faculty members.

III) On receipt of the such proposal, the same shall be decided in accordance with law within a period of three months from the date of receipt of such proposals.

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IV) Rule is made absolute in the aforesaid terms.

14] In view of disposal of Writ Petition, Notices of Motion and Chamber Summons do not survive and accordingly stand disposed of.

[B. P. COLABAWALLA, J.]

[B. R. GAVAI, J.]