

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8468 OF 2018

Late Bhausahab Hiray SS Trust's
Dr. Baliram Hiray College of Architecture,
Registered under Indian Trusts Act 1882,
Having its office at: Dr. Baliram Hiray
College of Architecture, 341, Shirsekar
Marg, Near Kherwadi Police Station,
Government Colony, Bandra (East),
Mumbai – 400 051
Through its Principal
Sunil Raosaheb Magdum,
Age 55, Residing at A-304, Shivsadan,
Veershaiv Nagar, Chincholi Bunder
Road, Malad (West),
Mumbai – 400 064.

.... Petitioner

- Versus -

1. Union of India
Through its Ministry of Human
Resources and Development.
2. The State of Maharashtra
Through its Secretary to the Department
of Higher & Technical Education.
3. Council of Architecture
Established under the provisions of the
Architects Act, 1972, having its office
At: India Habitat Centre, Core-6A,
First Floor, Lodhi Road,
New Delhi – 110 003.

4. The University of Mumbai,
Having its address at Kalina Campus,
CST Road, Santacruz (East),
Mumbai – 400 098.

5. State Common Entrance Test Cell
Having its office at: 8th Floor, New
Excelsior Building, A.K. Nayak Marg,
Fort, Mumbai – 400 001.

.... Respondents

Mr. Y.S. Jahagirdar, Senior Advocate, with
Mr. Shailendra S. Kanetkar for the Petitioner.
Mr. Atul Singh for Respondent No.1-UoI.
Ms S.D. Vyas, “B” Panel Counsel for Respondent
No.2-State.
Mr. Rahul Nerlekar for Respondent No.3.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : AUGUST 06, 2018

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. Rule. Learned counsel appearing on behalf of the respective respondents waive service. By consent, rule is made returnable forthwith and the writ petition is taken up for final disposal.

2. This writ petition under Article 226 of the

Constitution of India challenges the action of the Council of Architecture, respondent No.3 to this writ petition, in issuing a show cause notice dated 27-6-2018, copy of which is at Exhibit “F”, page 43 of the paper-book, and the further action of respondent Nos.2 and 5, which results in reduction of the intake capacity of the petitioner not only from 20 to 10 students, as is presently permitted by the Council, but to Zero.

3. Very few facts are necessary for disposal of this writ petition.

4. The petitioner is a College of Architecture and which is managed and administered by a Trust. The registration of that Trust dates back to 1977 and it is claimed that there are several educational institutions and colleges established by the Trust.

5. The Architects Act, 1972 was enacted by the Indian Parliament and the first respondent-Union of India/Central Government has the power to implement it. It can frame rules also. The power to grant approval to the Regulations which have been framed by the Council, namely, the third respondent, vests

with the Union of India (respondent No.1). The second respondent/State of Maharashtra through its Department of Higher & Technical Education has been conferred with the power to establish a Cell so as to conduct a Common Entrance Test (“CET” for short). The CET results are the basis on which centralised admission process for various professional courses has now been put in place. The fifth respondent to this petition is the Head of such Cell.

6. The petitioner says that from the year 1994, and that is the year of its establishment, a Bachelors Degree Course in Architecture was being offered under the auspices of the petitioner-College. Meaning thereby, that this course was being conducted from the year 1994 and for the past nearly 25 years. From the Academic Year 2011-12, the third respondent allowed the petitioner to commence and later on also included the courses styled as M. Arch. (Urban Design) and M. Arch. (Project Management). Admittedly, these are Masters Degree Courses. It is in these circumstances that the Council, which prescribes the minimum standard of architectural education, grants approvals

to colleges and institutions and recognition to the courses. It can also prescribe the intake capacity. The intake or sanctioned strength of the students for the Masters Degree Courses was determined at 20 by this Council. The Council's prescription of intake capacity for the Bachelors Degree Course is 40 and the Masters Degree Courses has 20 students. Nothing has been done in relation to the Bachelors Degree Course.

7. The petitioner relies upon the letter of approval dated 27-7-2010, copy of which is at Exhibit "A" to the petition, to submit that it imposes no terms and conditions save and except prescribing eligibility criteria for admission at serial No.3 and stating that the teacher student ratio should be 1:5.

8. The faculty should be: 1 Professor, 2 Assistant Professors and 1 Lecturer. They shall be recruited after approval by the University and the recruitment shall be of those persons who fulfil the eligibility criteria and particularly possess the educational qualification and expertise prescribed by the Council of Architecture. To start with, the school shall recruit at least 1

Professor and 1 Assistant Professor on full-time basis from each of the specialisations to facilitate introduction of the course.

9. How the visiting faculty should be drawn, Library, Computer Studio, Workshop and Laboratory are the terms and conditions *inter alia* prescribed for this Masters Degree Course.

10. The petitioner says that in terms of this letter of approval, it made all the appointments, fulfilled all the terms and conditions and the Council also does not dispute it. After the Academic Year 2016-17, an application was made by the petitioner seeking extension of approval and based on the receipt of that application, a team of Inspectors was dispatched by the Council (respondent No.3) which carried out an inspection and submitted a report to the Executive Committee. The Executive Committee considered this report and granted extension of approval for the Academic Year 2016-17 with intake capacity of 20 students *vide* a communication, copy of which is at Exhibit “D” to the petition.

11. This extension of approval means it is nothing but a

permission or approval for that academic session and that is how even the petitioner and the Council proceeded, but in the subsequent Academic Year 2017-18 no team of Inspectors was sent, no inspection held, but the extension was granted with the same intake capacity of 20 students *vide* Exhibit “E”, dated 30-5-2017.

12. The petitioner highlights its achievements and says that the Bachelors Degree Course has intake capacity of 160 students and thereafter for the Academic Year 2018-19, the petitioner applied for extension of approval for both the courses.

13. The petitioner was served with the copy of show cause notice dated 27-6-2018, copy of which is at Exhibit “F” (page 43) to the petition. The show cause notice alleges that, as far as the assessment report of the Inspection Committee for the purposes of granting extension of approval for two years full-time Master of Architecture (Project Management) Degree Course, that application was duly scrutinised and the assessment of the institution in terms of the report of the Inspection

Committee was also considered by the Council at its 190th Meeting held on 14 & 15-6-2018.

14. As far as the M. Arch. Course is concerned, the allegation in the show cause notice is that the institution has several deficiencies. We are concerned here with the two deficiencies highlighted in the show cause notice.

15. Upon receipt of this show cause notice, the result is that the intake capacity has been reduced from 20 to 10 for the Masters Degree Course for the Academic Year 2018-19.

16. Acting on this show cause notice, respondent Nos.2 and 3 promptly displayed on their websites that the petitioner-College has been served with a show cause notice and therefore, as far as the M. Arch. Degree Course is concerned, no student should be admitted to that course by this institute. The intake capacity has been reduced unilaterally to Zero by this Directorate.

17. The two actions are, therefore, challenged on various

grounds but Mr. Jahagirdar, learned Senior Counsel would submit that no fault was found with some institutions and some colleges which sought an additional intake capacity for the Bachelors Degree Course. That though the application was made seeking an increase from 120 to 160 students, the 120 intake capacity has been maintained and the petitioner also is satisfied with that.

18. As far as the post-graduation course is concerned, Mr. Jahagirdar submits that the course is M. Arch. (Project Management). The petitioner has an approval for that course and from 2010. Reliance is placed by Mr. Jahagirdar on this communication sanctioning intake capacity of 20 and that is extended or maintained by subsequent communications in this behalf. The petitioner has already discontinued the M. Arch. (Urban Design) Course. The Masters Degree Course now remaining with the petitioner is the M. Arch. (Project Management). There, the intake capacity was 20 but now it has to be reduced on the ground of lack of one faculty, namely, one Associate Professor is less. As far as proper segregation of

facilities for B. Arch. & M. Arch. is needed, that according to Mr. Jahagirdar is provided and it is clarified as to how the same is provided. In reply to the show cause notice, the petitioner also pointed out that the show cause notice itself refers to the teaching faculty and says that for an annual intake of 20 students, the institution offering post-graduate programmes shall have minimum core faculty consisting of 1 Professor, 1 Assistant Professor and 2 Lecturers/Research Assistants for each post-graduate course. The institution shall have a faculty student ratio of 1:5 and the institution may have a maximum of 50% of its teachers as visiting faculty. The petitioner pointed out in the reply to the show cause notice that in a 24 years old institution and which has been permitted the intake capacity of 20 for the past 8 years, there was never any prescription hitherto to appoint somebody as an Associate Professor. The teaching faculty in terms of the prescription of the Council is in place. It is, therefore, clear that there is no shortfall. In any event, recently appointment was made of one more Associate Professor for the M. Arch. (Project Management) Course and the details

are enclosed with this reply to the show cause notice, copy of which is at page 45-46 of the paper-book.

19. In the circumstances, Mr. Jahagirdar would submit that the reduction of intake capacity pending the show cause notice and when it was permitted for all the prior academic years, adversely affects the petitioner. Now, with the reduced intake capacity it will not be possible for it to bear the expenditure in the Masters Degree Course. Even if the 20 students admitted earlier would conclude their studies after two years, yet, with such new intake capacity there is an imbalance and which cannot be corrected but at the cost of closure of the course. Such an eventuality will visit the petitioner with adverse consequences. Therefore, there was no occasion for issuance of the show cause notice and in any event and without prejudice pending adjudication of the show cause notice there, is no justification for reducing the intake capacity.

20. Mr. Jahagirdar also highlights the fact that the Directorate of Higher & Technical Education of the Government

of Maharashtra has gone a step further and brought down the intake capacity to Zero, which in any event is illegal and erroneous.

21. A copy of this petition has been served upon the Council and Mr. Nerlekar appeared and accepted the said notice and waived service. On the earlier occasion, he sought time to take instructions.

22. Today, when the matter was placed under the caption "For Passing Orders", the instructions to Mr. Nerlekar are two-fold. Firstly, he states that there is now the information which is sought in pursuance of the show cause notice made available to the Council, but belatedly. Secondly, the Executive Council is likely to meet on 12-8-2018, on which date it would take a decision on whether to pursue the show cause notice or otherwise. Until that is determined, this Court should not interfere in its writ jurisdiction and particularly in academic matters. Mr. Nerlekar says that no impression should be gathered by this Court that the Council is out to harass or

embarrass the petitioner but its endeavour is to ensure maintenance of standards of education and no compromise with its quality. It is towards that end that a show cause notice has been issued and today this Court cannot pass an order declaring it as without jurisdiction, for the Council is empowered to determine solely and exclusively, whether the minimum qualification prescribed even for the Masters Degree Course are satisfied or otherwise. For these reasons, he would submit that the writ petition be dismissed.

23. With the assistance of both the Counsel, we have perused the writ petition and the annexures thereto. The urgency with which this petition was moved by the petitioner was that because the common admission process commences from 7-8-2018, and with this intake capacity being brought down to Zero by the State Government on a total misconception and misinterpretation of the matter pending before the Council, we must pass urgent orders on this today.

24. Mr. Nerlekar would like us to not interfere with the

show cause notice and we are aware of the salutary principles in that regard. A decision of an academic body or an expert academician has to be respected and duly regarded and should not be lightly brushed aside or interfered with in writ jurisdiction merely because a better or another view is possible. Secondly, the parameters are too well settled and in the absence of proof of arbitrariness or *mala fides*, such decisions deserve to be upheld.

25. However, we have perused carefully the instant show cause notice and we presume that everything else alleged therein is true and correct. Today the position is, for the past at least five academic years, the intake capacity for M. Arch. (Project Management) Degree Course has been determined by this very Council at 20. From the Academic Year 2011-12, this intake capacity has been maintained. An extension has been granted to such intake capacity academic year after academic year and by carrying out an inspection. The Management of the college has not failed to make an application seeking extension at the conclusion of every academic session and only commence

the process of admission after that extension is approved. There is no dispute that such extension has been granted upto the year 2017-18. Now, the show cause notice has been served and the show cause notice is contested only to the extent of this Masters Degree Course. There the allegation is based on the norms of the Council of Architecture for imparting M. Arch. Degree Course. The norms have been throughout the same. For instance, when an application seeking extension for the Academic Year 2016-17 was under consideration, the extension was granted by inviting the attention of the petitioner to the norms and particularly in relation to the teaching faculty. They read as under:-

***“Teaching Faculty:** For an annual intake of 20 students, the institution offering post-graduate programmes shall have a minimum core faculty consisting of 1 Professor, 1 Assistant Professor and 2 Lecturers/Research Assistants for each post-graduate course. The institution shall have a faculty student ratio of 1:5. The institution may have a maximum of 50% of its teachers as visiting faculty.”*

The intake capacity with 20 students was maintained on the footing that on inspection the petitioner-College has been found to have a teaching faculty of 1 Professor, 1 Assistant Professor and 2 Lecturers/Research Assistants for each post-graduate

course. The institution shall have a faculty student ratio of 1:5 and the institution may have a maximum of 50% of its teachers as visiting faculty. This has not changed. In ordinary circumstances, therefore, extension of approval for the Academic Year 2017-18 has been granted and at page 42 we find that neither the teaching faculty norms have undergone any change nor such communication from the Council refers to any deficiency or shortfall.

26. On 27-6-2018, this show cause notice was issued but when the petitioner sought an extension for the year 2018, a team of Inspectors was dispatched. That team found that the faculty is deficient: Associate Professor one less. Now the deficiencies are relating to faculty in architecture and/or physical and academic infrastructure facilities in the conduct of the said course at the petitioner-institution. The second deficiency, if at all it is to be termed as one, is proper segregation of facilities for B. Arch. & M. Arch.. That we take it as an advice and not a deficiency by any means. If the deficiency is of faculty, then, that is indeed serious and may have a bearing

on the intake capacity or a nexus with it. However, the faculty is said to be deficient as the institution/college has one Associate Professor less. However, the teaching faculty norms have remained unchanged throughout. They do not speak of any Associate Professor. They do not speak of anything other than 1 Professor, 1 Associate Professor and 2 Lecturers/Research Assistants for each post-graduate course. That would suffice for achieving the ratio of faculty student, namely, 1:5. This post of Associate Professor is nowhere to be found in the norms. If that was not to be found, then how this prescription comes and from where has never been clarified to us. We do not see any justification for the Executive Council to sit in judgment and decide for itself this alleged deficiency in the faculty. It can decide an issue of this nature provided there was material to show that the teaching faculty consisting of 1 Professor, 1 Associate Professor and 2 Lecturers/Research Assistants for this post-graduate course was absent or was deficient by any means. There could not have been a prescription now referred for the first time of Associate Professor being less, for that was never the

norm and rather is not the norm, as is clear from Item 3, page 44 of the paper-book, which is but an annexure to the show cause notice. These norms of the Council of Architecture, for imparting M. Arch. Course, have thus not undergone any change. An allegation which is now made could not have been made. The show cause notice, therefore, clearly travels beyond these norms and advice by the Council itself. A decision to issue a show cause notice by alleging that faculty is deficient means the Council has gone beyond its jurisdiction and has indeed acted arbitrarily. The arbitrariness in the action is apparent because without realising the repercussions of issuance of show cause notice, the Council is now saying it does not want to take any arbitrary action. The repercussions are that expert faculty is essential for a Masters Degree Course. The institution, namely, the petitioner before us is allegedly deficient in faculty and when such a serious charge is levelled, the authority in-charge of the common admission process is bound to take a note of it. It not only takes a note of it but goes ahead and reduces the intake capacity of the petitioner to Zero. This would mean that in the

current Academic Session 2018-19, the petitioner would not be allowed to admit any student in the Masters Degree Course and all preparations, including the faculty in place would then be completely useless. They would have to sit idle. Even the infrastructural facilities would be un-utilised or under-utilised. This is surely not the intent while conferring the status of a highest academic body under an Act of the Parliament in the Council. The Council also is expected to act responsibly and not bring about a situation when it invites private participation but such private bodies are forced to close down or abandon the course midway. We do not see how with no intake capacity in the year in question can the petitioner afford to continue to impart studies to the existing students. Thus, the M. Arch. students would also suffer for there would not be any additional fees received in the academic year in question. There would not only be a financial imbalance but some of the teachers exclusively meant for teaching the post-graduate courses would have to rest content with taking the classes for the students earlier admitted in the two year course. They may not have any

workload in terms of the newly admitted or fresh students. That would adversely impact them as well. We do not expect the Council to take such an unreasonable stand and the opportunity given to it to correct itself has also not been understood, as is clear by the instructions to Mr. Nerlekar.

27. Once the show cause notice is found to be beyond jurisdiction and vitiated by arbitrariness, then the parameters in judicial review permit us to interfere with it. We accordingly interfere with it. We proceed to quash and set aside the said show cause notice. We direct that the petitioner's intake capacity ought to be maintained at 20 students for the Academic Year 2018-19. That would be taken as an extension of the approval for the current Academic Year 2018-19. The Directorate of Higher & Technical Education and the fifth respondent shall forthwith correct their websites and remove the impugned entry against the column intake capacity Zero and correct it and clarify that it is 20 students and who can take admission in the third round of the ongoing process. Thus, the petitioner's name shall be included in the ongoing admission process with the

same intake capacity.

28. While we interfere with the impugned show cause notice, we clarify that our act or order should not be construed as taking away any of the powers of the Council to prescribe a teaching faculty or to revise its norms or to cause an inspection in the working of the petitioner-institution. Far from directing that the intake capacity shall be maintained for all academic years to come, we clarify that in the subsequent year the Council is free to take such steps as are provided by law, including modifying its own Regulations. Clarifying thus, we make the Rule absolute as above. There will be no order as to costs.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)

Suresh
Jagdish
Sajnawat

Digitally signed
by Suresh
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