

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

WRIT PETITION (L) NO.3129 OF 2018

Krutika Pradip Kadam

..Petitioner

Versus

The State of Maharashtra and others

..Respondents

**Mr. Divesh S. Chamboowala a/w Mr. Amey Deshpande,
Advocate for the Petitioner.**

**Mr. L. M. Acharya, Special Counsel a/w Ms. G. R. Shastri, Addl.
Govt. Pleader & Ms. Deepali Patankar, Assistant to Govt. Pleader
for Respondent Nos.1, 2 & 3 – State.**

Mr. Rui A. Rodrigues, Advocate for Respondent No.4.

Ms. Anu C. Kaladharan, Advocate for Respondent No.5.

CORAM : B. R. GAVAI &

M. S. KARNIK, JJ.

DATE : 26th OCTOBER, 2018

ORAL JUDGMENT (Per B. R. Gavai, J)

1] Rule. Rule is made returnable forthwith. Heard by consent of parties.

2] By way of present Petition, Petitioner impugns the order passed by Respondent No.2 dated 27th August 2018, thereby rejecting the application filed by the present Petitioner for transfer

from Symbiosis Law School, Pune to Respondent No.5 college.

3] Heard Mr. Chamboowala, learned counsel for the Petitioner, Mr. Acharya, learned Special Counsel for Respondent Nos.1, 2 and 3 and Mr. Rodrigues, learned counsel for the Respondent No.4 -University.

4] Mr. Chamboowala, learned counsel submits that the perusal of Sub Rule (4) of Rule 16 of the Maharashtra Unaided Private Professional Education Institutions (Regulation of Admission to the Full Time Professional Undergraduate Law Courses) Rules, 2017 (herein-after referred to as the “said Rules” for the sake of brevity), reveals that a candidate from one professional educational institutions is entitled to be admitted to another unaided private professional educational institutions subject to the fulfilment of eligibility criterion and requirements stipulated under the provisions of sub-section (1) of section 3 of the Act and the fulfilment of the conditions stated in sub-rule (2).

5] Per contra, Mr. Acharya, learned counsel for Respondent

Nos.1, 2 and 3 submits that rules are framed under rule making power available to the State Government under Section 23 of the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admissions and Fees) Act, 2015 (herein-after referred to as the “said Act”). Learned counsel submits that clause (q) of Section 2 of the said Act defines “Private Professional Educational Institution”, which specifically excludes institution declared to be a deemed university. It is therefore submitted that when the Act itself is not applicable to the deemed university, by no stretch of imagination rules under the said Act would be applicable to the transfer of student from deemed university to a Private Professional Educational Institution.

6] For appreciating the rival submissions, it will be relevant to refer to clause (q) of Section 2 of the said Act :-

“(q) “Private Professional Educational Institution” means any college, school, institute, institution or other body, by whatever name called, conducting any professional course or courses approved or recognized by the appropriate authority and affiliated to any university, but shall not include, -
(i) any such institution established, maintained or administered by the Central Government, any State Government or any local authority;

- (ii) institution declared to be a deemed university under section 3 of the University Grants Commission Act, 1956; or
- (iii) a university to which the provisions of the University Grants Commission (Establishment and Maintenance of Private Universities) Regulations, 2003 are applicable.”

It will also be relevant to refer to Section 3 of the said Act, which reads thus :-

- “3.** (1) The eligibility conditions and requirements for admission to a professional course at any Private Professional Educational Institution shall be such as may be notified by the Government from time to time, but shall not be less than, those stipulated by the appropriate authority.
- (2) No student shall be admitted to a Private Professional Educational Institution unless the student possesses such educational or equivalent qualification as may be notified.
- (3) Unaided institution shall admit students through a process as may be prescribed.”

It will also be relevant to refer to Sub Rules (1) to (4) of Rule 16 of the said Rules :-

“16. Change of Institution after First year. -

- (1) The candidate seeking for a change in institution after successfully completing the First or Second or Third or Fourth year (Whichever is applicable) of studies in unaided institution will be allowed to do so in any other unaided institution subject to the availability of

seats and changes will be carried out based on the marks of First year or relevant Year. The Principal shall be responsible for ascertaining the eligibility of the Candidates as laid down by the concerned University for the course.

(2) Transfer of Candidates after one, two, three or four year shall be made in the following manner, -

(a) The Candidate once admitted in First or Second or Third or Fourth Year shall not be eligible for transfer to any other institution during the same academic year.

(b) The Candidate passing the First year (both first and second semester) or Second Year (both Third and Fourth Semester) or Third Year (both Fifth and Sixth Semester) or Fourth Year (both seventh and eighth Semester) examinations in full or failed in one of the heads of passing are considered as eligible for transfer of Institution or course provided that for transfer after Second Year the candidate should have passed the First year, and for transfer after Third year the candidate should have passed First and Second year and for transfer Fourth Year the candidate should have passed First, Second and Third year;

(c) There shall be no transfer of students at any stage in any case from Unaided Institutions to Government or Government Aided, University Departments, University Managed Institutions. However, the Candidate from Government or Government Aided, University Departments, University Managed Institution may seek transfer to Unaided Educational Institution;

(d) There shall be no transfer of students at any stage to Autonomous Institutions;

(e) The Principals of Unaided institutions shall

consider the Candidates from other institutions for transfer with prior approval from the Directorate of Higher Education on submission of No Objection Certificate (NOC) from institution, Eligibility Certificate from University and Vacancy position. The Principal or Director shall ascertain the eligibility of Candidates as laid down by the concerned University for the course to which the Candidate is being transferred;

(f) No application without recommendation of the Principal of Institution shall be entertained by the Directorate of Higher Education;

(3) The Candidates admitted under Supernumerary Quota seats are not eligible for change of Course or Institution;

(4) The candidates from the professional educational institutions which are outside the purview of this act shall be eligible for transfer to the unaided private professional educational institutions subject to the fulfilment of eligibility criterion and requirements stipulated under the provisions of sub-section (1) of section 3 of the Act and the fulfilment of the conditions stated in sub-rule (2);”

7] The said Act has been enacted for the purpose of regulation of admissions and fees of unaided Private Professional Educational Institutions in the State of Maharashtra. Clause (q) of Section 2 thereof defines as to what would be Private Professional Educational Institutions. No doubt that it excludes three types of institutions from the definition of Private Professional

Educational Institutions. It excludes the institutions established, maintained or administered by the Central Government, any State Government or any local authority. It also excludes the institutions declared to be a deemed university under section 3 of the University Grants Commission Act, 1956. It further excludes a university to which the provisions of the University Grants Commission (Establishment and Maintenance of Private Universities) Regulation, 2003 are applicable.

8] Section 3 of the said Act deals with the eligibility for admission. Sub Section (1) of Section 3 of the said Act provides that the eligibility conditions and requirements for admission to a professional course in any Private Professional Educational Institution shall be such, as may be notified by the Government from time to time, but shall not be less than, those stipulated by the appropriate authority. Sub Section (2) provides that no student shall be admitted to a Private Professional Educational Institution unless the student possesses such educational or equivalent qualification as may be notified. Sub Section (3) provides that unaided institution shall admit students through a process as may

be prescribed.

9] Rule 16 of the said Rules deals with the change of institutions after the first year. Sub Rule (1) of Rule 16 provides that the candidate seeking for a change in institution after successfully completing the First or Second or Third or Fourth year of studies in unaided institution shall be allowed to do so in any other unaided institution subject to the availability of seats and changes will be carried out based on the marks of First Year or relevant year. Further the Principal shall be responsible for ascertaining the eligibility of the Candidates as laid down by the concerned University for the course to which candidate is seeking transfer. Clause (a) of Sub Rule (2) puts a restriction on transfer in the same academic year. We are not concerned with clause (b), since it concerns the cases of candidates, who have not passed in all the subjects. Clause (c) of Sub Rule (2) puts a restriction on transfer from Unaided Institutions to Government or Government Aided, University Departments, University Managed Institutions etc. The perusal of clause (e) would reveal that the Principals of Unaided institutions are required to consider the candidates from other

institutions for transfer with prior approval from the Directorate of Higher Education on submission of No Objection Certificate (NOC) from institution, Eligibility Certificate from University and Vacancy position. The Principal or Director is required to ascertain the eligibility of candidates as laid down by the concerned University for the course to which the Candidate is being transferred. Clause (f) provides that no application without recommendation of the Principal of Institution shall be entertained by the Director of Higher Education. Sub Rule (3) provides that the candidates admitted under Supernumerary Quota seats are not eligible for change of Course or Institution. Sub Rule (4) thereof provides that the candidates from the professional educational institutions which are outside the purview of this act shall be eligible for transfer to the unaided private professional educational institutions subject to the fulfillment of eligibility criterion and requirements stipulated under the provisions of sub-section (1) of section 3 of the Act and the fulfillment of the conditions stated in sub-rule (2).

10] It could thus be seen that a conjoint reading of the provisions of the said Act and said Rules would reveal that a

candidate from one professional educational institution is entitled to be transferred to another unaided private professional educational institution, if he fulfills the requirements provided under Sub Rule (2) and (3) of Rule 16. What transfers are to be prohibited is also specifically provided in the rules. Whereas, a candidate from unaided institution cannot be transferred to a Government or Government Aided Institution, it is not vice versa. A candidate from a Government or Government Aided institution is entitled to be considered for transfer to a private professional educational institution.

11] Insofar as condition in Sub Rule (2) of Rule 16 is concerned, what is required is that the Principal of the college shall ascertain the eligibility of the candidates. The eligibility has to be as per the requirement of the university. It is further to be ascertained, as to whether there are vacancies in the college where the student seeks transfer and lastly for seeking a transfer from one institute to another institute prior approval of the Director of Higher Education is to be obtained.

12] In the present case, it is not disputed that the Petitioner

possesses the necessary eligibility as could be seen from Exh-E7 to the Petition which is a certificate issued by the University of Mumbai certifying that the Petitioner possesses the necessary eligibility. The college from where the petitioner is seeking transfer has also given its NOC. The Respondent No.5 college, where the Petitioner is seeking transfer has also certified that the Petitioner possesses the necessary eligibility for admission and it has no objection for transfer of the Petitioner in its college. It could thus be seen that the only hindrance that appears to be for granting of the approval by the Respondent No.2, is on the ground that the provisions of the Act and rules are not applicable to the institute from where the Petitioner is seeking transfer.

13] The main thrust of Mr. Acharya, is on the ground that the college from where the Petitioner is seeking transfer itself is beyond the purview of the scope of the said Act and that the rules cannot override the provisions of the Act. We find that the contention as raised by the Respondents is without any substance. No doubt that the rules cannot supersede the provisions of the substantive enactment. However, such a question would arise only

when there is a conflict between provisions of the Act and the Rules. The Act is enacted for the purpose of regulating the admissions and the fees structure of the unaided private professional institutions. This has been done with in tune with the directions of the Hon'ble Supreme Court in order to curb the menace of the private unaided professional institutions, who were acting as per their own whims in determining the fees and granting admission. The Act has been basically enacted to bring the private unaided institutions within its purview for the purpose of regulating the admission and determination of fees structures. As such, though in view of clause (q) of Section 2 of the said Act, the said Act may not be applicable to a deemed University like Symbiosis in the matter of determination of fees structure and regulation of admissions, there is nothing in the Act which prohibits transfer of a student from such a institution to the institution to which the said Act is applicable. On the contrary, Sub Rule (4) of Rule 16 specifically takes care of such a situation and it enables such private professional educational institutions to admit students from professional educational institutions, which are beyond the purview of the said Act. What is sought to be prohibited has been specifically provided in the Rules.

Subordinate legislation under the said Act has taken due care to see that even students, who have passed First Year or Second Year or Third Year or Fourth from the institutions, which are beyond the purview of the enactment for the purpose of regulation of fees and admission, can be admitted in the unaided private professional institutions which come under the purview of the act. In the present case, the Petitioner has fulfilled all the requirements, not only that at the time of filing of the Petition there were seven vacancies available in the Respondent No.5 college. In that view of the matter, the view taken by the Respondent No.2 is on incorrect understanding of law. The impugned order therefore deserves to be quashed and set aside and we pass the following order :-

ORDER

- I] The impugned order dated 27th August 2018 is quashed and set aside.
- II] By an interim order passed by the Division Bench of this Court dated 19th September 2018, the Petitioner has already been permitted to attend the

second year LLB class in the Respondent No.5 college.

III] We therefore direct the Respondent No.5 college to regularize the admission of the Petitioner. We further direct the Respondent Nos.2 to 4 to regularize the admission of the Petitioner for the second year LLB course in the Respondent No.5 college.

IV] Rule is accordingly made absolute in the aforesaid terms.

V] Parties to act on an authenticated copy of this order.

[M. S. KARNIK, J.]

[B. R. GAVAI, J.]