

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5670 OF 2019**

KV Pendharkar College, Through Dr Abhijit
Prabhakar Desai

...Petitioner

Versus

University of Mumbai Through The Vice
Chancellor & Ors

...Respondents

Ms Anjali P Yajurvedi, *for the Petitioner.*

Mr Sanjay Udeshi, *i/b Sanjay Udeshi & Co, for Respondent No. 1.*

Ms RA Salunkhe, AGP, *for the Respondent No. 4-State.*

Dr Ajay Deshmukh, *Registrar University of Mumbai, present.*

**CORAM: S. C. DHARMADHIKARI &
G.S. PATEL, JJ**

DATED: 13th June 2019

PC:-

1. Rule. Respondents waive service. By consent, rule made returnable forthwith, and the Petition is taken up for final hearing.

2. By this Petition under Article 226 of the Constitution of India, the Dombivli Shikshan Prasarak Mandal running the Petitioner college is seeking a direction to the University of Mumbai

to reconsider the proposals of the college submitted vide letters dated 25th September 2018 and 29th September 2017.

3. All reliefs pertain to non-consideration of these proposals on the specious plea and ground that there are complaints pending against the college.

4. The Petitioner says that the department of Higher and Technical Education, Government of Maharashtra had by the Government Resolution dated 13th September 2017 laid down conditions for recognition of new courses in Art faculty subjects.

5. Pursuant to this Government Resolution and the policy enunciated therein the Notification was issued on 21st September 2018 by the in-charge Registrar of the University of Mumbai. That Notification reads as under:

NOTIFICATION

The proposals are invited as per provisions of the Maharashtra Public Universities Act, 2016 and also as per Higher & Technical Education Department letters No. बृआमा-2018/प्र.क्र. 281/विशि-3 दिनांक 11 सप्टेंबर, 2018 and बृआमा-2018/प्र.क्र. 281/विशि-3

दिनांक 19 सप्टेंबर, 2018 for the academic year 2019-20 from the educational Management/Society/Trust's and Principals/ Directors of affiliated colleges/institutes to start New Colleges/ faculties/ courses/ subjects/ Divisions (under – graduate and post-graduate) to start New Colleges (under-graduate and post-graduate) as per Perspective Plan of the University of Mumbai duly approved by the Maharashtra State Commission for Higher Education and Development through the **online-process** only.

The Perspective Plan, Government Resolutions, Government of Maharashtra letter, Fee circular, Proposals Guidelines and other details etc available on University website <https://muonline.org.in> (in Downloads section)

After submission of the proposals through the online process, it must be submitted in three (03) hard copies alongwith video C.D. Of basic infrastructure to the Affiliation Section, Room No. 2097, University Building, Fort, Mumbai – 400 032 on or **before 29th September, 2018 up to 5.00 p.m. Except 2nd and 4th Saturday, Sunday and Public Holidays.**

The applications will not be accepted under any circumstances after the above mentioned date and time and also fees will not be refunded if proposals which are not as per Perspective Plan of the University which may please be noted.

Mumbai – 400 032 (Prof. Sunil Bhirud)

21st September, 2018 I/c Registrar.

6. In terms of this Notification and the advertisements, the Petitioner on 25th September 2018 addressed a letter to the Registrar, University of Mumbai stating that they are forwarding proposals, for starting new course in Masters of Art degree (English Literature) to be started from the academic year 2019-2020 in the required format. Together with that several proposals were forwarded to commence teaching in MA (Economics), Bachelors of Mass Media and additional Division for B.Com (Accounting and Finance).

7. On all these proposals on 22nd March 2019, the Petitioner was informed that the same were scrutinised by the Scrutiny and Expert Committee. They forwarded a report. Based on that report the University in a one-line communication, a copy of which is at Exhibit "H", page 39, said that the proposals cannot be accepted because there are complaints against the Petitioner college.

8. When this Petition was placed before us, and with a complaint that this is no communication in the eyes of law nor can the University deny the acceptance of these proposals on such

grounds, we called upon Mr Sanjay Udeshi, learned Advocate appearing on behalf of the University to take instructions. Accordingly, the matter was placed today.

9. Mr Depak G Wasave, Deputy Registrar of the University of Mumbai has filed an Affidavit. In this Affidavit it is stated that the proposal of the Petitioner college to start a new course and additional division was rejected on account of various complaints filed against the Petitioner college, pursuant to which a report was submitted by the Fact Finding Committee. The Fact Finding Committee suggested the appointment of an Administrator in the Petitioner college. Furthermore, in respect of the Petitioner college resolutions have been passed by the Board of Colleges and Universities recommending issuance of a Show Cause Notice to revoke the affiliation of the institution.

10. Pursuant to this, the Respondent No. 1 University is in the process of issuing Show Cause Notice for revoking the affiliation to the Petitioner college. In paragraph 6 of this Affidavit, this is what is stated:

“6. I say that the Respondent University has rejected the Application of the Petitioner Institute for starting New Course as well as proposal for starting Additional Division solely on account of various complaints received by the Respondent University against the Petitioner college. I say that on or above 2015 the fact finding committee was constituted by the University to verify factual position on account of various financial and other Complaints filed against the Petitioner College. On 23rd March 2015 a report was submitted by the said fact finding committee who concluded that the work environment in the Petitioner College is not conducive for the academic growth and not consistent with vision and mission goals of the University. The said committee also made some recommendation which includes appointment of administrative on the Petitioner College. Hereto annexed and mark Exhibit “A” is copy of report of the fact finding committee dated 23rd March 2015. I say that with respect to functioning of the Petitioner College various serious complaints were filed, copies of some of the complaints are annexed hereto and marked as Exhibit B-1 to B-3. I crave leave of this Hon’ble Court to rely to and refer upon copies of the other complaints as and when produce. I say that in past also the Respondent No.1 had also directed the Petitioner College to take necessary action pursuant to the recommendation of the Grievance Committee in the application of one Shir Rajaram R Naik. Hereto annexed and marked as Exhibit - “C” is copy of the letter dated 17th November 2017 directing the Petitioner College to comply. I say that, in view of the report of the fact finding committee, Resolution has also been passed by Board of Colleges and University Development (BCUD) on 23rd June 2015 inter alia resolving to issue

Show Cause Notice under Section 91 of Maharashtra University Act 1994 to the Petitioner College for de-affiliation. Hereto annexed and marked as Exhibit - “D” is relevant extract of Resolution passed by the Board of Colleges and University Development (BCUD) dated on 23rd June 2015. I say that the Respondent No.1 is in process of issuance of Show Cause Notice for de-affiliation to the Petitioner College. When the Respondent No.1 is in process of issuance of notice for de-affiliation to Petitioner College, there is no question of permitting them to start new course or start additional division. In view of these complaints, it has been thought fit by the Respondent No.1 University not to permit the Petitioner College for starting New Course as well as starting Additional Division as proposal”.

11. Our attention had been invited to Section 120 of the Maharashtra Public Universities Act 2016. That Section enables the withdrawal of affiliation or recognition. Sub-section (1) thereof says that if it is found that affiliated colleges or recognised institutions fail to comply with the conditions of affiliation or recognition as provided in Section 108 or which do not function properly or take action as per directions issued under the Act, or are found to be conducting the college or recognised institution in a manner prejudicial to the interest of the university or the standards laid down by it, the Board of Deans may issue a notice to the

management to show cause as to why the privileges conferred on the college or recognised institution by affiliation or recognition should not be withdrawn in part or in whole or modified.

12. The Board of Deans has been defined. The definition of the term denotes that it is a body which has to take independent decisions. The independence of that body is contemplated by the very statute itself. The statute has set these standards and the statute has also indicated how they have to be complied with. Today the Board of Deans has not sent any show cause notice nor has action under Section 120 been initiated.

13. Our query to Mr Udeshi was whether absent this, a mere 'contemplated' action under Section 120 would enable the University or particularly the Registrar to issue the impugned communication.

14. He would submit that there is a complete procedure and ultimately the Vice Chancellor shall pass the necessary order on the academic council's recommendation. We do not think that all this

can be pre-empted by issuing such communications. Ultimately, if there are complaints against the college or there are disputes pending in the Court of law, that by itself and without anything more would not straightaway indicate that the institution is conducting the college in a manner prejudicial to the interest of the University or contrary to any standards laid down by it. If the college is conducted properly and its affairs are continuing smoothly despite pending legal disputes, then, we do not think that such drastic measures as are now communicated can be initiated.

15. We do not think that the Affidavit would enable us to sustain the impugned communications.

16. As a result of the above discussion each of these communications are quashed and set aside. The University shall take a fresh decision on these proposals uninfluenced by these communications and strictly in accordance with the law. Rule is made absolute in these terms.

17. Needless to clarify that our order and directions does not prevent the competent authorities from taking steps for withdrawal of affiliation or recognition if so advised. These actions however have to be initiated strictly in accordance with law.

(S. C. DHARMADHIKARI, J)

(G. S. PATEL, J)