

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7904 OF 2019

Lions Club of Silvassa Charitable	}	
Trust and Anr.	}	Petitioners
versus		
The University of Mumbai	}	
and Ors.	}	Respondents

Ms.Varsha Palav i/b. The Laureate for the petitioners.

Mr.Rui Rodrigues for respondent no.1.

Mr.Shrishail S.Deshmukh for respondent no.2.

Mr.Vikas M. Mali-AGP for respondent no.3 (State).

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

DATED :- SEPTEMBER 20, 2019

P.C. :-

1. Heard the learned Counsel appearing for the parties.
2. Rule. Respondents waive service. Since all affidavits have been filed and parties have been extensively heard, the writ petition is finally disposed of by this order.
3. This writ petition under Article 226 of the Constitution of India claims the following two reliefs:-

“b) By an appropriate Writ, Order or direction of this Hon’ble Court, the decision of the Respondent NO.1

communicated to the Petitioners by the letter dated 9th April, 2019 at Exhibit “N” herein above thereby communicating that the Petitioners’ proposals for Affiliation to the course in Master of Commerce (M.Com.) and the additional divisions for the courses in Bachelor in Commerce, Bachelor in Management Science as well as Bachelor in Science in Physics, be quashed and set aside.

c) By an appropriate Writ, Order or direction of this Hon’ble Court, the Respondent No.1 be directed to grant to grant affiliation/ permission to the Petitioners for conducting the course in Master of Commerce (M.Com.) and the additional divisions for the courses in Bachelor in Commerce, Bachelor in Management Science as well as Bachelor in Science in Physics, for and from the Academic Year 2019-2020.”

4. The petitioners before us are firstly, a trust registered under the provisions of the Societies Registration Act, 1860. It is carrying on charitable activities, including running the educational institutions. They are within the jurisdiction of the Union Territory of Dadra and Nagar Haveli. They have established a college of Science and Commerce, namely, petitioner no. 2 and another College of Law. The first respondent is the University of Mumbai which grants affiliation and it has affiliated petitioner no.2. The second respondent is the Union of India through the Administration of Dadra and Nagar Haveli. The third respondent is the State of Maharashtra, through the Department of Higher and Technical Education.

5. The petitioners before this court state that in the year 2012, it was intending to start courses in Business Management Studies, Bachelor of Commerce (Plain), Bachelor of Science (IT) and for that purpose, the first petitioner sent a proposal for affiliation of

colleges conducting the courses to respondent no. 1 on 29th October, 2012 along with the required documents. The second respondent issued the necessary no-objection certificate dated 24th November, 2012 for conducting the courses. The proposals were forwarded for final approval under the provisions of section 82(4) of the Maharashtra Universities Act, 1994. The first petitioner did not receive any communication from the first respondent, the Mumbai University. It was revealed on inquiries that the proposal was returned by the State of Maharashtra despite there being a no-objection certificate issued by the second respondent for conducting the above courses.

6. Being aggrieved by this inaction, the first petitioner filed a writ petition being Writ Petition No.2701 of 2013 before this court. In that Writ Petition, there was an ad-interim order and direction directing the University of Mumbai to consider the application for affiliation without insisting on permission of the State of Maharashtra, subject of course, to petitioner no.1 complying with other requirements, including those set out in section 83 of the Maharashtra Universities Act, 1994.

7. Pursuant to that order, on 5th May, 2015, the University was pleased to grant affiliation to start a new college. That is now in place and the courses are conducted since the academic year 2014-2015. Thereafter, on 14th September, 2016, the earlier writ petition was finally allowed and it was held that the college proposed is to be set up in Silvassa, which is part of the Union Territory of Dadra and Nagar Haveli and therefore, there is no question of any approval or permission from the State of Maharashtra in terms of section 82 of the Maharashtra Universities Act, 1994. The order

passed by this court is referred in the writ petition and its copy is annexed at page 26 of the paper book.

8. Now, by natural growth, the first petitioner is desirous of carrying on courses conferring Master's Degree in Science and Commerce. A decision was taken in the academic year 2017-2018. Yet again, the first respondent-University declined to grant affiliation to the courses on the ground that due to change in the policy of third respondent, it was not in a position to grant affiliation. The petitioner reminded the University of the view taken by this court and also stated that they would obtain the permission/ no-objection from the Union Territory of Dadra and Nagar Haveli and the University should be rest assured about the same. Still, that was not considered and that is why this petition is filed.

9. We have carefully perused the writ petition and its annexures. There is an affidavit which has been filed by the University of Mumbai. In this affidavit, the first respondent says that the communication of 9th April, 2019 addressed to the petitioners informs them that their proposals for affiliation to the courses in Master of Commerce and additional divisions for the courses in Bachelor of Commerce, Bachelor of Management Studies and Bachelor of Science in Physics were rejected. The communication is referring to the provisions of the Maharashtra Public Universities Act, 2016. It is stated that in terms of the Government Resolution dated 13th September, 2017 and the revised advertisement dated 21st September, 2018, the petitioners sent the proposals for grant of permission for starting new courses and for additional divisions. The permission from the State

Government having not been obtained, the University rejected the proposals.

10. Now, the impugned communication of 9th April, 2019 at page 56 of the paper book clearly refers to the Maharashtra Public Universities Act, 2016.

11. The reply of the second respondent is crucial, for the second respondent is the Director of Education of the Union Territory of Dadra and Nagar Haveli and in this affidavit, it is stated that in Dadra and Nagar Haveli, there are five private colleges. One SSR College of Arts, Commerce and Science is affiliated to Savitribai Phule Pune University. Then, the same institute is having a Pharmacy College, Management and Research College of Education and B.Ed. College affiliated to the same University and these three colleges are situated at Silvassa. The present petitioners are operating the college under the name and style as Devkibai Mohansingh Chauhan College. This college is affiliated with the University of Mumbai. This college was granted no-objection on 24th November, 2012 by the Director of Education with approval of the Administrator of Dadra and Nagar Haveli. Now, the applications which are made are properly scrutinised, and commensurate with the requirement of the educational institutions in the Union Territory of Dadra and Nagar Haveli, the requisite no-objection certificate is granted.

12. Insofar as the present petitioners are concerned, the Master of Commerce course is currently not being offered by the Government College, Silvassa and there is a requirement of Master of Commerce course in the Union Territory of Dadra and Nagar

Haveli. No application for starting such a course was received till date. Therefore, before making a request for affiliation with the University, respondent nos. 1 and 2 are required to have a no-objection for starting Master of Commerce course subject to fulfilling all necessary terms and conditions of the Directorate of Education, Dadra and Nagar Haveli.

13. In the rejoinder affidavit, the petitioners contend that section 109 of the Maharashtra Public Universities Act, 2016 has no application in the facts and circumstances of the present case. In fact, it is stated that the no-objection certificate was granted by the competent authority and the Director of Education with the approval of the Administrator of the Dadra and Nagar Haveli for the Bachelor's courses in Commerce, Science and Computer Application as well as Business Management Studies. As far as Master of Commerce is concerned, the same is not being currently offered by the Government College, Silvassa and there is a requirement of the said course in the Union Territory of Dadra and Nagar Haveli. The affidavit of the second respondent is relied upon to urge that the Dadra and Nagar Haveli Administration has already granted the permission. Further, the first respondent-University of Mumbai has not forwarded the proposal of the petitioners. Now, if the proposal has been processed at various levels, in the sense the proposal for academic year 2019-2020 was accepted by the first respondent on 27th September, 2018, a scrutiny of which was successfully carried out on 12th December, 2018, if the petitioners were apprised of any such requirement, they would have approached the authorities, but in this affidavit, it is highlighted that the local administration has already granted the no-objection on 24th November, 2012. Now, no separate no-

objection is required for the continuation of the affiliation to the courses.

14. After hearing all the counsel and perusing these materials, we are of the view that no larger issue need to be dealt with by us. Whether the Maharashtra Public Universities Act, 2016 can have any application to institutions beyond the State of Maharashtra, but affiliated to the University of Mumbai is an issue which can be addressed in an appropriate case. In the present case, what we find is that there is an already established college. The no-objection from local administration has also been granted on 24th November, 2012. The courses so as to award degree in Commerce and Science are functional from the academic year 2014-2015. There is no grievance in relation thereto. In the Master's Degree in Commerce, we find that the Dadra and Nagar Haveli Administration has clarified that there is a Government College in Silvassa, but it does not offer any opportunity to local students to obtain the Master's Degree in Commerce. Thus, in the Union Territory of Dadra and Nagar Haveli, there is a requirement of such a college. Once there is an established college already functional and without any grievance from any quarters and that college has the infrastructure even to commence and impart studies for awarding Master's Degree, then, in the peculiar facts and circumstances of the case, on the basis of the affidavit of the Union Territory filed in this court and the statements therein, the University of Mumbai should grant the necessary affiliation is our firm view. Once the necessary no-objection is in place, and the further requirement of obtaining a no-objection for commencing courses to award the Master's Degree is also in place in the form of an affidavit in this court, then, the University need not have any apprehension.

15. The University shall, within a period of four weeks from today, grant the necessary affiliation to the Master's Degree course to the second petitioner college. Rule is, therefore, made absolute in terms of prayer clauses (b) and (c).

16. Needless to clarify that the additional divisions for the Bachelor of Commerce, Bachelor of Management Science and Bachelor of Science in Physics is a matter solely within the purview of the Union Territory. That aspect has already been covered in the grant of approval and permission of the local administration. The entire divisions would, therefore, be the part and parcel of Bachelor courses in Commerce and Science and duly conducted by the college, namely, petitioner no.2. The Master's degree required that affiliation from the University of Mumbai and that is granted by the present order. That is granted on the condition of fulfilment of permission/ no-objection of the local administration of the Union Territory.

17. The writ petition is allowed accordingly. There would be no order as to costs.

(S.C.DHARMADHIKARI, J.)

(G.S.PATEL, J.)