

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 18/11/2020****Judgment Delivered on : 25/11/2020****Writ Petition (C) No. 2071 of 2020**

Krishi Shikshan Association Raipur, Through - the Secretary, Narendra Gautam S/o Shri V.K.GAutam, 51 years, R/o 59, Jawahar Nagar, Durg, District Durg, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh, through- The Secretary, Agriculture Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur, District Raipur, Chhattisgarh.
2. Indira Gandhi Krishi Vishwavidyalaya, Through - The Registrar, Indira Gandhi Krishi Vishwavidyalaya, Krishak Nagar, Raipur, District Raipur, Chhattisgarh.
3. The Academic Council, Indira Gandhi Krishi Vishwavidyalaya, Krishak Nagar, Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Petitioner	: Shri Prafull N Bharat, Advocate.
For Respondent No. 1/ State	: Shri Sudeep Agrawal, Deputy Advocate General
For Respondent No. 2 & 3/ University	: Shri Shashank Thakur, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****C.A.V. Judgment****Per P.R. Ramachandra Menon, Chief Justice**

1. Annexure P/1 dated 11.08.2020 notifying the "Indira Gandhi Krishi Vishwavidyalaya Ke Snatak Pathyakramo Me Pravesh Hetu Niyam 2020" (for short 'the 2020 Rules'), particularly clause 8.2 which deals with the counselling for allocation of seats in the Management Quota for admission to B.Sc Ag. (Hons.) / B.Sc. Horti (Hons.) issued on behalf of the University is put to challenge in this

writ petition, by the Association of 15 private unaided Colleges offering education in the agriculture segment.

2. The ground of challenge is that taking over of the counselling process by the University in the matter of filling up the seats in the Management Quota virtually intrudes into the rights, liberties and administration vested with the private managements and it stands contrary to the law declared by the Apex Court in ***T.M.A.Pai Foundation & Others v. State of Karnatka & Others***; {(2002) 8 SCC 481} and ***P.A. Inamdar & Others v. State of Maharashtra & Others***; {(2005) 6 SCC 537}.

3. Reply statement has been filed on behalf of the 2nd and 3rd Respondents-University rebutting the averments and allegations in the writ petition. A return has been filed on behalf of the 1st Respondent/State as well to the extent the State is involved, having been shown as the 1st Respondent in the party array.

4. As put forth by Shri Prafull N Bharat, the learned counsel appearing for the Petitioner, the factual inputs reveal that the Petitioner is a registered Association of Private Agricultural Colleges in the State as borne by Annexure P/2. It is stated that the writ petition is filed by the Petitioner Association as authorised in Annexure P/3 resolution passed by the individual Colleges enlisted in Annexure P/4. It is pointed out that in terms of the guidelines governing affiliation and recognition of Colleges and institutions on permanent non-grant basis, certain privileges were extended to the private unaided Colleges in the context of the need felt for increasing the agricultural education; particularly since only limited seats were available in the Government sector. In conformity with the relevant provisions of law, "Academic Regulations for Bachelor's Degree Programme of Affiliated Colleges and Institutions" were framed which deals with the admission of the students in the Bachelor Degree programme. Clause 3.0

dealing with admission, which is to be on the basis of merit and in accordance with the policy and guidelines of the State Government, stipulates that the minimum admission requirement shall be Higher Secondary (10+2) or equivalent with a minimum of 50% aggregate marks as given in Clause 3.1. Clause 3.1.1 stipulates that 50% of the total intake capacity shall be available for admission to NRI/Management candidates which have to be filled up by the Management, whereas, 15% seats are earmarked to be filled up from the candidates from other States and the remaining 70% is to be filled up from the candidates of the Chhattisgarh State which stands further segregated equally as 'free seats' and 'payment seats'. This is evident from Annexure P/5 Guidelines produced by the Petitioner.

5. It is pointed out that till the academic year 2019-2020, the admissions to the above Colleges were being made through a common entrance test known as 'Pre Agriculture Test' (PAT) conducted by the State Government and it was accordingly that Annexure P/6 Rules known as 'P.A.T. Admission Rules 2020' were issued by the 2nd Respondent for the current year as well, on 15.06.2020. However, because of the adverse circumstances resulted because of the COVID-19 pandemic, 'PAT' could not be conducted by the State because of various restrictive measures. In the said circumstances, the Academic Council of the 2nd Respondent-University, in the meeting held on 14.07.2020, made modification to Annexure P/6 Rules, whereby it was resolved to effect admission to B.Sc Ag. (Hons.) / B.Sc. Horti (Hons.) / B.Tech (Agricultural Engineering) / B. Tech. (Food Technology) courses on the basis of merit reckonable with reference to the aggregate marks obtained in Physics, Chemistry and Biology/Maths in the 12th standard. This is evident from Annexure P/7 Notification dated 30.07.2020. But for the above change, all other Rules under Annexure P/6 (PAT 2020 Admission Rules) were to remain the same.

6. The grievance of the Petitioner is that on 11.08.2020, the impugned Rules were issued to govern the field of admission virtually taking over the counselling process and filling up the seats in the Management Quota from the hands of the Institutions, to be dealt with by the University itself as stipulated in 'Clause 8.2' which is stated as an attempt to encroach into the day-to-day affairs of the private Colleges. This made the Petitioner to file Annexure P/9 representation before the Respondent/University which however has not yielded any positive result and hence the challenge in the writ petition.

7. The learned counsel for the Petitioner submits that the rights and liberties of the private unaided Colleges stand settled by virtue of the law declared the Apex Court in ***T.M.A.Pai Foundation & Others*** (supra) {paragraphs 61, 66, 68, 139 and 144}. The learned counsel further submits that there is absolutely no rhyme or reason for taking up the power of admission from the private Managements by the University and that there has been no complaint so far with regard to the admissions made by the member Colleges in the Management Quota. It is stated that the University is free to conduct inspection with respect to the admissions given by the private unaided institutions in the Management Quota in respect of the 15% seats. It is however added that the private managements will effect admissions under the Management Quota strictly on the basis of merit by accommodating the students who are standing at the top of the merit list with reference to the marks obtained by them in the '+2 level', in view of the change brought about to the admission process vide Annexure P/7. The learned counsel also submits that the impugned Notification/Rules have been issued by the Vice Chancellor (whereby the power of counselling process has been taken over by the University) for which no power or authority is vested with the Vice Chancellor as the competent authority in this regard is only the Academic Council. The proceedings brought on record also do not reveal that

any such power has been exercised by the Academic Council and as such, the proceedings are *per se* wrong and illegal in all respects.

8. According to the Respondent-University, because of the COVID-19 pandemic, the Chhatisgarh Professional Examination Board expressed its inability to conduct the Pre Agriculture Test (PAT) or such other examinations in the current year. In the said context, taking note of the fact that the University was also not in a position to conduct the entrance test on its own, the Academic Council in its meeting held on 14.07.2020 decided to give admission in the under-graduate courses of the University on the basis of marks obtained by the candidates at 10+2 level. In furtherance to the said decision, the Academic Council in its 130th (Emergent) Meeting held on 05.08.2020, framed rules for admission to B.Sc. Agri (Hons) / B.Sc. Horti. (Hons.) / B.Tech. (Agricultural Engineering) / B. Tech (Food Technology) {under graduate course} vide Annexure P/1, which was notified accordingly. Mention has been made in the reply filed on behalf of the 2nd and 3rd Respondents to the relevant provisions under the Indira Gandhi Krishi Vishwavidyalaya (CG) Adhiniyam 1987 (*for short 'the Act'*) with specific reference to the power and duties of the different statutory authorities. It is further pointed out that the decision taken by the Academic Council has been approved by the Board of Management of the University, in conformity with the relevant provisions of law.

9. With reference to the course and events, the University points out that as per the Regulations 2009, the University granted affiliation to 15 private Colleges for imparting education in B.Sc (Agr.), B.Sc. (Hort.) and B.Tech (under graduate courses) and the private Colleges were asked to recruit teachers and fulfil the eligibility as per the directions of the University Grants Commission and the Indian Council for Agriculture Research. Due to COVID-19 pandemic, regular inspection of the private Colleges could not be conducted and hence the Colleges were directed to furnish the relevant information. A committee of 13 senior

Professors of the University under the Chairmanship of the Dean, Students Welfare was constituted to examine the information furnished by the private Colleges. As per the report dated 10.06.2020 of the Committee submitted to the Registrar, out of 15 Colleges, only 02 Colleges had obtained 60% and above marks in the score card prescribed by the Academic Council and the Board of Management; which led to issuance of show cause notices to the remaining 13 Colleges on 29.06.2020 whereby they were directed to submit their reply with respect to the shortcomings. It was after receipt of the reply that the matter was placed before the Academic Council in its 130th meeting held on 05.08.2020 as disclosed from the relevant pages of the meeting produced as Annexure R/2-1. The decision taken by the Academic Council was placed before the Board of Management of the University as discernible from the relevant pages of the minutes of the meeting produced as Annexure R-2/2 and it was after approval by the Board that the same was caused to be notified. It is further pointed out that as per the decision taken by the Academic Council, all the private Colleges were allowed to admit 48 students, including 7 students in the Management Quota. According to the 2nd and 3rd Respondents, in the previous years, the Colleges were left free to admit the students in the Management Quota on their own which led to various complaints with respect to demand of huge amount as donation for admission under the Management Quota. There was no system for selection of students on merit basis and the system lacked transparency. In the current year, since the 'PAT 2020' (entrance test) could not be conducted and the admissions have been ordered to be made strictly on the basis of marks in the '+2 level' as per Annexure P/7, it became more obligatory to ensure that the merit was not compromised. It is also brought to the notice of this Court by the learned counsel for the University that in the current year, applications were to be submitted by the aspirants 'online' (including in the Management Quota) to the University and the counselling is being done with reference to the preference expressed by the

students who were required to show it specifically in the applications which deal with 'free seats' as well as the 'payment seats'. It is asserted by the Respondent/University that no prejudice has been caused to the private Colleges as the seats under the Management Quota have not been curtailed and further that the Academic Council and the Board of Management have almost doubled the fees in the Management Quota seats. By virtue of the decision taken in the 130th meeting of the Academic Council, the existing fees of Rs.26,000/- per semester came to be doubled as Rs. 50,000/- per semester for the Management Quota seats. A copy of the notification dated 11.08.2020 laying the fee structure for the Management Quota seats has been produced as Annexure R-2/3. The learned counsel for the University submits that the steps taken by the University are only to protect the interest of all concerned and no prejudice has been caused to the affiliated private Colleges in any manner.

10. There is no doubt with regard to the law declared by the Apex Court in ***T.M.A.Pai Foundation & Others*** (supra) and ***P.A. Inamdar & Others*** (supra). At the same time, it is to be noted that the Supreme Court has alerted that the merit shall not be compromised under any circumstances and different modes/devises have been spelt out to ensure the merit. Conducting the 'entrance examination' is one such event. Admittedly, the basic qualification to get admission to the under graduate courses involved is '+2' and admissions could be aspired only by those candidates who have cleared +2 examination, subject to clearance of the common entrance test. It was accordingly, that the 'PAT' was being conducted by the State and this year also, PAT 2020 Admission Rules were notified as per Annexure P/6 on 15.06.2020. But since the Chhatisgarh Professional Examination Board expressed its difficulty to conduct the test in the COVID-19 pandemic scenario, alternate arrangement had to be thought about, lest the students/aspirants as well as the educational institutions should be made to suffer if there is any vacuum and one year is lost. This made the Academic Council to

rise to the need of the hour and to take a decision to give admission on the basis of marks secured in the '+2 level' as borne by Annexure P/7. This shows that ensuring the merit as envisaged by the Apex Court in the decisions cited (supra) by conducting 'entrance test' was not possible in the current year. To go by the merit (on the basis of aggregate marks obtained in the '+2 level') it necessitated close surveillance and scrutiny. Admittedly, all the students/ aspirants concerned have made applications directly to the University including for admission in the Management Quota and the allotment will be made by the University strictly based on the merit position; by virtue of which no prejudice will be caused to any of the private Colleges who could give admissions to the students who have opted their Colleges. The fees payable for the Management seats has been virtually doubled by enhancing from Rs. 26,000/- per semester to Rs. 50,000/- per semester, as resolved by the Academic Council in its 130th meeting held on 05.08.2020. It is asserted that there is no attempt to encroach into the day-to-day administration of the private Colleges and the alleged grievance as projected by the Petitioner-Association in the writ petition is absolutely without any merits or bonafides.

11. After hearing both the sides and on going through the materials forming part of the record, it is seen that the steps taken by the University are pursuant to the decision taken by the Academic Council vide Annexure P/7, followed by the decision taken in the 130th meeting held on 05.08.2020 to facilitate admission to the deserving students, lest one year is lost; since the Professional Examination Board of the State has expressed difficulty in conducting the common entrance test for the current year because of the COVID-19 pandemic. The decision taken to proceed with the admission based on the marks at the '+2 level', in the absence of a common entrance test, is virtually to help the students/aspirants for joining the course without losing the year and this has helped the private educational institutions as well, who can impart education based on the higher

fees (almost doubled from Rs. 26,000/- to Rs. 50,000/- per semester) and never to curtail any rights of the Private Managements. Such decision has been taken in the particular facts and circumstances as discussed above.

12. During the course of argument, this Court put forth a specific question to the learned counsel for the Petitioner as to how and in what manner the private educational institutions, who are the members of the Petitioner-Association as enlisted in Annexure P/4, are adversely affected because of the course pursued by the University, which however could not be satisfactorily answered. On the other hand, it was conceded that the students will be identified and admitted by the private educational institutions strictly on the basis of merit i.e. on the basis of total marks obtained by them in the '+2 level'. This is exactly what is being done by the University also and if the admission is to be given on the basis of the maximum marks obtained in the '+2 level', whether it be by the University or by the private educational institutions in the Management Quota (to the extent of 15%), no prejudice can be caused to any of the private educational institution because of the course to be pursued as notified under clause 8.2 of Annexure P/1, which is to the following effect:

“8.2 प्रबंधन कोटा में भी प्रवेश के लिए बिन्दु क्र. 3, 5, एवं 6 के अनुसार न्यूनतम अहर्ता/योग्यता रखना आवश्यक है। इन सीटों पर भी काउंसिलिंग के माध्यम से मेरिट के अनुसार प्रवेश दिया जावेगा। इसमें भी छत्तीसगढ़ के मूलनिवासी को प्राथमिकता दी जावेगी। स्थान रिक्त होने पर अन्य प्रदेशों के उम्मीदवारों को भी प्रवेश दिया जा सकेगा।”

13. In response to the submissions made by the learned counsel for the Petitioner that the impugned proceedings have been issued by the Vice Chancellor having no power in this regard, the learned counsel for the Respondent-University submits that appropriate extent of power is vested even on the Vice Chancellor, by virtue of sub-section (4) of Section 16 of the Act which is to the following effect:

“16. Powers and duties of Vice-Chancellor.

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) In any emergency which in the opinion of the Vice-Chancellor requires that immediate action should be taken, the Vice-Chancellor shall take such action as he deems necessary and shall at the earliest opportunity thereafter report his action to such officer, authority or body as would have in the ordinary course dealt with the matter, and if the officer, authority or body disagrees with the action of the Vice-Chancellor the matter shall be referred to the Chancellor whose decision thereon shall be final.”

It is added that the Rules have been framed on the basis of the decision of the Academic Council in its 130th meeting held on 05.08.2020 and the proceedings have been approved by the Board of Management, by virtue of which it is not assailable under any circumstances.

14. After hearing both the sides and after considering the materials on record, this Court finds that the steps taken by the University are only to protect the interests of the eligible students/aspirants, who otherwise would have lost one year because of the COVID-19 pandemic. This would have adversely affected the educational institutions as well, if there was a vacuum, for want of admissions to the course during the current year. The admission however has to be strictly on the basis of merit as made clear by the Apex Court. When the Petitioner concedes that the admission intended to be given by them under the Management Quota is on the basis of higher marks among the candidates who apply for admission, which is the same basis to be reckoned by the University while effecting the counselling pursuant to the applications invited by the University (it is conceded that no applications have been invited directly by the members of the Petitioner Association for Management Quota), the counselling proposed to be done by the University in respect of the Management Quota does not warrant any interference. The Petitioner has not demonstrated the prejudice, if at all any, with regard to the course sought to be pursued vide Clause 8.2 of

Annexure P/1. The challenge against Annexure P/1 Rules fails. We do not find any tenable ground to call for interference.

15. The writ petition is dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE