

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

KANCHAN
VINOD
MAYEKAR

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WRIT PETITION NO.2122 OF 2016

- 1. Rachna Sansad College of
Applied Art & Craft, through its
Director, Mr. Uday D. Chande
5th Floor, 278, Shankar Ghanekar Marg,
Prabhadevi, Mumbai – 400 025.**
 - 2. Rachna Sansad Trust
A Public Charitable Trust
Through its Trustee, Mr. Uday D. Chande,
4th Floor, 278, Shankar Ghanekar Marg,
Prabhadevi, Mumbai – 400 025.**
- ... Petitioners**

Versus

- 1. All India Council for Technical Education,
Through its Member Secretary having its office
At 7th Floor, Chanderlok Building, Janpath,
New Delhi – 110001 and also through the
Regional Director, Western Regional Office at
2nd Floor, Industrial Assurance Building,
Veer Nariman Road, Opp. Churchgate Rly. Station,
Mumbai – 400 020.**
- 2. Directorate of Art
J. J. School of Applied Art
Dr. D. N. Road, Mumbai – 400 001.**
- 3. The Commissioner & Competent Authority
State CET Cell, 305, 3rd Floor, Govt. Polytechnic
Building, 49, Kherwadi, Ali Yawar Jung Marg,
Bandra (East), Mumbai – 400 051.**
- 4. The Directorate of Technical Education,
Through its Secretary, Government of**

**Maharashtra, 3, Mahapalika Marg,
Dhobi Talao, Mumbai – 400 001.**

5. **State of Maharashtra
The Department of Higher & Technical
Education, Through the Government
Pleader, PWD Building, Fort,
Mumbai – 400 023.**

6. **University of Mumbai
Fort, Mumbai – 400 001.**

... Respondents

Mr.S.C.Naidu, a/w. Mr.Manoj Gujar, Mr.Pradeep Kumar, Ms.Divya Yajurvedi, Mr.Sudesh Kumar Naidu, Mr.T.R.Yadav for the Petitioners.

Mr.Abhijeet A.Joshi, a/w. Ms.Varsha Sawant, Mr.Swapnil Jadhav for the Respondent no.1.

Mr.Hemant Haryan, Assistant Government Pleader for the State – Respondent nos. 4 and 5.

Mr.Rui A.Rodrigues for the Respondent no.6.

**CORAM: R. D. DHANUKA AND
ABHAY AHUJA, JJ.**

RESERVED ON : 8th OCTOBER, 2021

PRONOUNCED ON : 22nd OCTOBER, 2021

JUDGMENT (Per R.D.Dhanuka, J.) :-

Rule. Mr.Abhijeet Joshi, learned counsel for the respondent no.1 waives service. Mr.Hemant Haryan, Assistant Government Pleader waives service for the respondent nos. 4 and 5. By consent of parties, the petition is heard finally. Some of the relevant facts for the purpose

of deciding this writ petition are as under :-

2. By this writ petition filed under Article 226 of the Constitution of India, the petitioners have impugned the order 8th April, 2016 rejecting the request of the petitioners for change of location without hearing the petitioners and an order dated 30th April, 2016 passed by the Director, Approval of All India Council for Technical Education placing the petitioners under 'No Admission'. The petitioners have also prayed for an order and direction against the respondent no.1 to grant extension of approval for the academic year 2016-2017 and to upload the name of the petitioner no.1 for the Centralized Admission Process and to allow to participate in CAP round and Institutional Quota Admission Procedure for the academic year 2016-2017 in respect of B.A.F. (Applied Art) courses conducted by the petitioners in its college and for other reliefs.

3. On 4th August, 2000, the petitioner no.1 college was granted approval by the State Government through Director of Technical Education for establishing a college of Applied Arts and Craft and offer 4 years B.F.A. Degree course with approved intake of 60 students per

academic year.

4. On 8th August, 2001, the petitioner no.1 was granted First Time Approval by the respondent no.1 for the academic year 2001-02 which was extended for each subsequent academic year 2015-16. On 9th August, 2001, the petitioner no.1 college was granted First Time Affiliation by Mumbai University for the said course. It is the case of the petitioner that the only other college imparting 4 years B.F.A. (Applied Art) Degree Course in Mumbai is Sir J.J.School of Arts with intake capacity of 100 students per academic year. Combined intake capacity of both colleges is 160 students per academic year. Minimum 750 students apply for B.F.A.- 4 Years Degree Course.

5. All colleges of Applied Art are registered with the Directorate of Arts, Maharashtra State. The Directorate of Arts is the Competent Authority for conducting Common Entrance Test and admission to 4 years Full Time Degree Course B.F.A. (Applied Arts). The admission Regulating Authority, constituted under section 7 of the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admission and Fees) Act, 2015 admits students to those course as per

inter-se merit.

6. On 10th February, 2016, the petitioner no.1 filed online applications for two separate approvals i.e. (i) Extension of Approval for B.F.A. for 2016-17 and (ii) change of location/site. The petitioners paid separate fees aggregating to Rs. 4 lacs towards the same. On 8th May, 2016, the respondent no.1 rejected the application for change of location/site. On 30th April, 2016, the respondent no.1 rejected the application for Extension of Approval for academic year 2016-17 and placed the petitioners in the 'No Admission' category. The Standing Appellate Committee by order dated 30th April, 2016 affirmed the decision of the respondent no.1 for non-issuance of Extension of Approval for the academic year 2016-17. Being aggrieved by the said two orders, the petitioners filed this writ petition.

7. On 1st June, 2016, a Division Bench of this Court granted *ad-interim* relief in terms of prayer clauses (b) and (c) thereby staying the operation of the said impugned order dated 30th April, 2016 which were seeking stay of the order dated 30th April, 2016 and to direct the respondent no.1 to grant Extension of Approval for the academic year

2016-17 for the full intake and to upload the name of the petitioners for the Centralized Admission Process Procedure for the full intake of students which was granted by the respondent no.1 for the academic year 2015-16 and for allowing the petitioners to participate in the CAP round in the said academic year.

8. Being aggrieved by the said *ad-interim* order passed by this Court, the respondent no.1 preferred Special Leave Petition bearing no. 22082 of 2016 before the Hon'ble Supreme Court. By an order dated 14th December, 2016, the Hon'ble Supreme Court was pleased to set aside the *ad-interim* order passed by this Court on 1st June, 2016 and directed this Court to consider the matter on its own merit and to dispose of the matter in accordance with law. The Hon'ble Supreme Court left it to this Court to make alternative arrangements for the students if possible. The respondent no.1 thereafter filed affidavit in reply. The petitioners filed affidavit affirmed on 7th July, 2017 and placed various facts and documents on record.

9. Mr.Naidu, learned counsel for the petitioners invited our attention to various documents annexed to the petition including the

impugned order passed by the respondent no.1 and the Appellate Authority and submits that the requirement of the land for setting up the college for the Applied Arts and Craft was 0.5 acres when the petitioner no.1 institute came to be established. The petitioners had pointed out that the petitioners had purchased an existing educational institution (Trinity Academy at Kurla). The said land was owned by the Trinity Academy comprising of a building of ground + mezzanine + first floor encompassing 2175 sq.mtrs. already erected and available. The petitioner submitted that it had proposed to shift the petitioner no.1 college to the said location at Kurla with effect from academic year 2015-16 and rendered an undertaking to that effect.

10. It is submitted by the learned counsel that the Director Approval Bureau vide his letter dated 31st December, 2015 recorded that the Committee did not recommend any action considering that the institution was proposing to shift to a new site but made it clear that if the institute would not apply for shifting of their college to a new site, EVC shall be conducted for grant of approval for the academic year 2016-2017.

11. It is submitted by the learned counsel that since the respondent no.1 did not consider the proposal of the petitioner on the ground that the registered Conveyance Deed of the property at Kurla ought to be filed along with the original property card, the petitioners were directed to apply for change of site/location in the following academic year.

12. It is submitted that on 20th January, 2016, the respondent no.1 had published in newspapers inviting application for different types of approvals commencing from 22nd January, 2016 till 21st February, 2016. The respondent no.1 rejected the request of change of location on 8th April, 2016 without granting any hearing to the petitioner. The Standing Appellate Committee also rejected the application filed by the petitioners.

13. It is the case of the learned counsel for the petitioners that pursuant to the ad-interim order dated 1st June, 2016 passed by this Court, the Directorate of Arts included the name of the petitioner no.1 college as an eligible institute for admitting the students for Bachelor of Fine Art (Applied Art) degree course for the academic year 2016-17 via CAP. The petitioners admitted 55 students via CAP to the First

Year Bachelor of Fine Arts for the academic year 2016-17. The petitioners admitted 54, 54 and 53 students for the academic year 2017-18, 2018-19 and 2019-20 respectively. Out of the 55 students who were admitted for the academic year 2016-17, 54 students have passed . One student has left course during the said period.

14. It is submitted by the learned counsel that for the academic year 2017-18 and every subsequent academic years including the academic year 2021-22, the Extension of Approval for conducting the four years degree course of Bachelor of Fine Art (Applied Art) has been granted by the respondent no.1 at the same venue i.e. 5th to 7th floor of the trust building. He submits that the 'Academy of Architecture' and the petitioner no.1 college though are situated in the same building, have independent facilities on independent floors. The instructional, administrative and circulation area of each college is separate, independent and distinct. The only facilities which are shared between the two institutions are canteen and auditorium. These areas are not mandatory requirement area and as on date there is no sharing of facilities.

15. It is submitted by the learned counsel for the petitioners that those alleged deficiencies pointed out by the respondent no.1 in the impugned order are subsequently cured. In support of this submission, learned counsel invited our attention to various documents annexed to the writ petition showing that the deficiencies have been cured by the petitioners. He submits that in view of the Extension of Approval having been granted by the respondent no.1 itself for the academic year 2017-18 upto the 2021-22 for conducting four years degree course at the same venue i.e. 5th to 7th floor of the trust building, the order passed by the respondent no.1 and the Standing Appellate Committee has become redundant for the academic year 2016-17. Those students admitted pursuant to the *ad-interim* order passed by this Court in the academic year 2016-17 have already passed from the said course and have been conferred with the degree by the University of Mumbai.

16. During the course of the arguments, this Court invited the attention of the learned counsel for the parties to the judgment of this Court delivered on 5th October, 2021 in Writ Petition No. 11390 of 2017 filed by ***Motiwala Homeopathic Medical College & Hospital and F.G.Motiwala P.G.Institute of Homeopathy and Research Centre***

vs. Union of India and others. After perusing the said judgment, Mr.Naidu, learned counsel for the petitioners urged that the said judgment in case of **Motiwala Homeopathic Medical College & Hospital and F.G.Motiwala P.G.Institute of Homeopathy and Research Centre** (supra) applies to the facts of this case.

17. It is submitted by the learned counsel that the Architectural Education does not come under the purview of AICTE. In support of this submission, learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in case of **All India Council for Technical Education vs. Shri Prince Shivaji Maratha Boarding House's College of Architecture and others, 2019 SCC OnLine SC 1445** and more particularly paragraphs 9, 10, 67, 68, 70 and 71.

18. It is submitted by the learned counsel that since the rights were accrued in favour of the petitioners on the basis of the requirement of the land at 0.5 acres, the respondent no.1 could not have amended the said requirement subsequently and could not have rejected the said application for Extension of Approval on the ground of the petitioners not having satisfied the amended requirement. He submits that the

condition of land requirement could not be changed with retrospective effect. In support of this submission, learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in case of ***Ferroddous Estates (Pvt) Ltd. vs. P.Gopirathnam (Dead) and others, 2020 SCC OnLine SC 825*** and in particular paragraphs 32 to 39. He submits that the new law comes in operation with prospective effect and not retrospective in its operation.

19. Mr.Joshi, learned counsel for the respondent no.1 on the other hand strongly placed reliance on the order passed by the Hon'ble Supreme Court on 14th December, 2016 thereby setting aside *ad-interim* order granted by this Court on 1st June, 2016 in this writ petition and directing this Court to consider the matter on its own merits and to dispose of in accordance with law. He submits that though the said *ad-interim* order was vacated by the Hon'ble Supreme Court, the petitioners continued to grant admission to the students. He submits that the Director of Technical Education had no power to admit any students in the petitioners college after order of this Court granting *ad-interim* relief admittedly having been set aside by the Hon'ble Supreme Court. He submits that when the condition for eligibility to

have plot of land was modified from 0.5 acre to 0.75 acres, no objection was raised by the petitioners.

20. It is submitted by the learned counsel that the petitioners have cured the deficiencies pointed out in the impugned order subsequently. It is lastly submitted that for the academic year 2020-21, the extension of approval has been granted with 10% reduction of seats i.e. from 60 to 54.

REASONS AND CONCLUSIONS

21. It is not in dispute that the petitioners had applied for permission to shift on 10th February, 2016 to the building at Kurla and had also applied for Extension of Approval for the academic year 2016-17. The respondent no.1 rejected the application for change of location/site by order dated 8th May, 2016. The petitioners thus continued both the courses in the same building. The respondent nos. 2 and 3 continued to grant Extension of Approval for the subsequent academic years i.e. 2017-18 to 2021-22 without insisting the petitioners to remove the alleged deficiencies for the academic year 2016-17. It is not disputed by the respondent nos. 2 and 3 that the petitioners have subsequently removed the deficiencies pointed out by the respondent nos. 2 and 3 in

the impugned order. It is also not disputed by the respondent nos. 2 and 3 that the petitioners have been issued the Extension of Approval for the subsequent years by the respondent nos. 2 and 3 and various students have been admitted by the petitioners pursuant to those Extension of Approval for subsequent academic years.

22. This Court in case of ***Motiwala Homeopathic Medical College & Hospital and F.G.Motiwala P.G.Institute of Homeopathy and Research Centre*** (supra) has considered identical facts wherein the permission was refused for the particular academic year on the ground of deficiencies however was granted Extension of Approval for subsequent years without calling upon the petitioners to cure the deficiencies pointed out in the impugned order therein. This Court considered the similar facts and after adverting to the judgment delivered by the another Division Bench this Court in case of ***Kaka Saheb Mhaske vs. Union of India & Others in Writ Petition No.11666 of 2016*** held that if the AICTE would not have been satisfied that the conditions pressed in the impugned order and deficiencies pointed out therein were not cured out, the AICTE would not have given Extension of Approval for the subsequent years.

23. This Court accordingly held that the conditions imposed in the impugned order rejecting the application on the ground of deficiencies became redundant. In view of the subsequent permissions granted by the respondent nos. 1 and 2 and condoning the alleged deficiencies pointed out in the impugned order, this Court was pleased to quash and set aside the impugned order therein and to direct the respondent to grant permission. In our view, judgment of this Court in case of ***Motiwala Homeopathic Medical College & Hospital and F.G.Motiwala P.G.Institute of Homeopathy and Research Centre*** (supra) squarely applies to the facts of this case. We do not propose to take a different view in the matter.

24. We accordingly pass the following order :-

(a) Writ petition is made absolute in terms of prayer clauses (a) (i) and (ii). The prayer clauses (a)(iii) and (iv) have become infructuous in view of the admissions already granted to the students for the academic sessions 2016-17 and for subsequent academic years.

(b) The respondent nos. 1 shall pass an order for

Extension of Approval to the petitioners for academic year 2016-17 for the students admitted in the said academic year within four weeks from today.

(c) Rule is made absolute accordingly. No order as to costs.

(d) The parties to act on the authenticated copy of this order.

[ABHAY AHUJA, J.]

[R.D.DHANUKA, J.]