

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8281 OF 2022

NIRMAL KRIDA AND SAMAJ PRABODHAN AND
ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Shri R.N. Dhorde, Senior Advocate, Amicus Curiae.

Shri A.N.Kakade, Advocate for the petitioners.

Shri S.G. Sangle, AGP, for respondent No.1/State.

Shri S.S. Tope, Advocate for respondent Nos.2 and 3.

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CORAM : RAVINDRA V. GHUGE

&

ARUN R. PEDNEKER, JJ.

DATE :- 20th August, 2022

Per Court :-

1. The petitioners have put forth prayer clauses B and

C as under :-

“B) *That by issuing writ of mandamus or any other appropriate writ, order or directions in the like nature, the order dated 22.7.2022 passed by the Respondent No. 3 Vice Chancellor Dr. Babasaheb Ambedkar Marathwada University, University Campus, Aurangabad may kindly be quashed and set aside.*

C) *Pending hearing and final disposal of this writ petition, the execution, operation and implementation of the order dated 22.7.2022 passed by the Respondent No. 3 Vice*

Chancellor Dr. Babasaheb Ambedkar Marathwada University, University Campus, Aurangabad may kindly be stayed with further direction to carry out the admission process for the academic year 2022-2023.”

2. On 12.08.2022, we had passed the following order:-

- “1. After prolonged hearing, we found it appropriate to request the learned Senior Advocate Mr. R. N. Dhorde, to render assistance to the Court as an amicus curiae.*
- 2. We list this Petition with the consent of the parties on 17.08.2022, as part heard.*
- 3. We record our appreciation for the consent given by the learned Senior Advocate Mr. R. N. Dhorde.”*

3. On 17.08.2022, after considering the submissions of the learned advocates for the respective sides and the suggestions put forth by the learned Senior Advocate Shri R.N. Dhorde, Amicus Curiae, we passed the following order :-

- “1. The petitioners have filed an additional affidavit dated 17/08/2022. The University has also filed an Additional Affidavit-in-reply, dated 17/08/2022.*
- 2. Since the pagination of the above replies is over-lapping, the learned Advocate for the petitioners shall ensure that the pagination is corrected, today itself.*
- 3. The learned Senior Advocate, who is assisting the Court as an Amicus, has suggested an option in the interest of the students, who are already admitted to the courses, with regard to which, the University has passed the impugned*

order, viz. that the legally selected and appointed qualified teachers in the same petitioner/institution on the faculty of grant-in-aid colleges, can teach the students, who are affected by the impugned order as a stop-gap arrangement, until the legally selected and appointed teachers are available, which is a possibility that may occur within eight weeks hence.

4. *The learned Advocate for the petitioners submits on instructions that, the College is duty bound to remove all the deficiencies and satisfy the University that such deficiencies have been done away with. As an endeavour to safeguard the interest of the students, the petitioner/Management is confident that the legally appointed teachers on the grant-in-aid faculties, who are unconnected with the impugned order, would be agreeable to spend excess time in the college campus, so as to impart education to the affected students from the non-grant basis college.*
5. *The learned Advocate representing the University submits that, since the University is duty bound to ensure that all deficiencies are removed, it would have to ponder on the suggestion made by the learned Amicus and which is acceptable to the petitioners. The University would make a statement after applying its mind to such suggestion, at 2.30 p.m. on 20/08/2022, which is a working Saturday.*
6. *Stand over to 20/08/2022 at 2.30 p.m.*

4. On 20.08.2022, the University has filed an additional affidavit dated 19.08.2022 and has specifically mentioned in paragraph Nos.1 to 6 (verbatim reproduced) as

under:-

“01. I say and submit that, the petitioner college is running under graduate as well as post graduate courses for which separate infrastructure is required as per Section 108 of the Maharashtra Public University Act, 2016. The present respondent University has approved separate full-time faculty for PG course and also for UG Course, therefore, the said condition is mandatory to provide all the infrastructures required as per Section 108 of the said Act.

The present petitioner college having full work load of Under Graduate faculty which cannot be share with Post Graduate Courses. The teachers who are specifically appointed for under graduate faculty are having full work load of the said faculty and its student. Therefore, additional work load of post graduate courses is not sustainable to the said teachers and it is also not advisable.

02. I further say and submits that, the present respondent University by way of circulars and letters many times intimated the petitioner college for the recruitment of teachers in the post graduate courses. However, the petitioner college has not taken care of the same and continued with the teachers selected through local selection committee. The selection of teachers through local selection committee is at all not acceptable and it is not as per the prescribed procedure of the statute as well as it is contrary tot he G.R. dated 08/03/2019 and 10/05/2019 and also contrary to the circular dated 18/06/2021.

03. I further say and submits that, as per Section 2 (61) of the Maharashtra Public University Act, 2016, the definition of teacher has been provided. Accordingly, “Teacher” means full

time approved professor, Associate Professor, Assistant Professor, Reader, Lecturer, Librarian, Principal, Director of an Institution, Director of Knowledge Resource Center, Director of Center of Lifelong Learning and Extension, Deputy or Assistant Librarian in the University, College Librarian, Director or Instructor of Physical Education in Any University Department, Conducted, Affiliated or Autonomous College, Autonomous Institution or Department or Recognized Institution of the University.

Accordingly, the teacher is the person who must has to be approved by the University. In the present case, as per the petitioner college they have the teachers who are appointed through local selection committee but the said teachers are not approved by the University, therefore, as per the said act and the circulars they cannot be called as teachers of the petitioner college.

It is required that, only approved teacher can teach the students and no one who is qualified as teacher can teach the students. The said act does not permit any qualified person to call as a teacher but only the person to whom the approval has been given by the University as teacher can teach the students.

- 04. I further say and submits that, for the post graduate courses apart from teaching and learning process dissertation is also one of the most important aspects for which duly approved PG teacher by the University is required.*
- 05. I further say and submits that, by way of present writ petition, the petitioner college has challenged the impugned order dated 22/07/2022. The present writ petition is filed on 01/08/2022, however, the result of the under*

graduate courses are declared by the University on 05/08/2022 and 06/08/2022.

It is required to mention that, the result of the B.A. Course is declared by the University on 05/08/2022, whereas, the result of B.Com and B.Sc Courses are declared by the University on 06/08/2022. Similarly, the result of B.Sc. (Forensic) is declared on 05/08/2022 and the result of B.B.A. and B.C.A. is declared on 18/08/2022. Therefore, unless declaration of result it is not possible to give the admission to the students who have cleared the said examination.

As per the petitioner the students are already admitted is the vague statement as the petition is filed on 01/08/2022 and all the concerned result are declared after 05/08/2022.

It is also required to mention that, by order dated 25/07/2022, the University has prohibited the petitioner college to provide the admissions to the students in particular courses. At the same time no results of UG courses were declared and as there is ban imposed on the petitioner college for the admission of the students, therefore there is no question to give the admissions at this large scale as mentioned by the petitioner college.

06. *I further say and submits that, Maharashtra Knowledge Corporation Limited is the agency appointed by the State Government who takes care about the process of admission up to declaration of the results of the students admitted by the educational institute. MKCL generates the form of the college admission and it has entire data regarding the admissions of the students in particular college or institute. MKCL has its separate website which provides the admission forms and which has collected the charges of Rs. 50 per students for maintaining the data of student.*

The present respondent University does not consider the admission of the student unless it is registered and login through the MKCL. As on the date, the University has collected the data of the admissions provided by the petitioner college and surprisingly it has been found that, there is no single admission has been done by the petitioner college till the date.

It is required to mention that, apart from the mentioned process i.e. to get the admission form from MKCL website and to fill up it, there is no any other process for the admission of the student. If the said procedure has not been followed, then it is clear that there is no admission in the said college. The data provided by the petitioner college regarding the admissions of the students is completely doubtful considering the dates of admissions. The copies of the relevant statements generated from the official website of MKCL regarding admission in the petitioner college are annexed herewith and marked as EXHIBIT "R-1" COLLY.

Hence, at present considering the all above aspect it is humble request of the respondent University that, as there is no merit in the present writ petition it may kindly be dismissed in the interest of justice.

Hence this second additional affidavit in reply."

5. The petitioner has put forth a contention that it has entire infrastructure as is required and also has the required teaching faculty with requisite qualifications. However, it is

clearly visible by the petitioner that the teaching faculty with reference to the courses being operated on non grant basis, comprises of those appointees who are selected by the local selection committee. The permission of the University to advertise the available posts by following the reservation roster was not obtained. Since the appointments of such faculty members have been on the basis of selection by the local selection committee, the University has rejected the proposal for approving 16 such appointments vide order dated 19.08.2022. As such, the courses with reference to which the impugned order has been passed restraining the petitioner from carrying out admissions, cannot be conducted due to absence of teaching faculty members.

6. The impugned order is based on the inspection having been done by the competent committee of the University under the Maharashtra Public Universities Act. The deficiencies are in terms of the infrastructural facilities such as buildings, laboratories and teaching staff. The six members committee constituted by the Vice Chancellor of the University has conducted video recording of the inspection. The show cause notice dated 05.07.2022 was issued to the petitioner Institution,

which has replied on 08.07.2022.

7. The substantial deficiencies noted by the committee are as follows:-

(a) Lack of infrastructural facilities like building, laboratories, libraries, books, equipment for teaching and research.

(b) Non availability of teachers appointed by the University nominated selection committee for post graduate courses.

(c) Absence of a qualified principal.

8. In view of the above, vide notice dated 16.07.2022 under Section 12(14) of the Maharashtra Public Universities Act, 2016, an explanation was called for as to why the College should not be placed in “no admission” category and the affiliation be withdrawn. After conducting a hearing on 19.07.2022 and upon noticing the fallacy in the explanation of the petitioner, the impugned order was passed.

9. The petitioner has contended that it has created two laboratories. A fresh advertisement has been issued for recruiting the teaching faculty and after the University provides the

selection committee for selection of the teaching faculty, that the deficiencies would stand removed. Until such teaching faculty members are appointed, which may consume two months, those teachers who are presently imparting education to the under graduate students, may be permitted to teach the newly admitted students.

10. The learned Senior Advocate Shri Dhorde suggested that the qualified teachers teaching the students at the post graduate level in the aided institute of the petitioner, may be called upon to work overtime and impart education to the students, who have already been admitted. If such arrangement is made, the students could be retained considering their fresh admissions, in the same petitioner institute, as an interim arrangement.

11. The University was given time to consider such suggestion. Vide its reply reproduced above, it has pointed out that even the admission made by the petitioner is illegal, as such admission is permitted only through the Maharashtra Knowledge Corporation Limited (MKCL). So also, the petitioner could not have resorted to admitting fresh students since the impugned order is dated 22.07.2022 and the results of the B.A. course were

declared by the University on 05.08.2022, B.Com. and B.Sc. results were declared on 06.08.2022, B.Sc. (Forensic) results were declared on 05.08.2022 and the results of B.B.A. and B.C.A. were declared on 18.08.2022. Having prohibited the college from admitting students vide the impugned order dated 25.07.2022 (wrongly typed as 22.07.2022 in the prayer clauses and in the petition), there are no students freshly admitted in the courses which are covered by the impugned order.

12. The petitioner submits that there are several repeaters in the college. They passed their examinations in the October batches of the third year of the B.A., B.Sc. and B.Com. courses. 120 students were admitted in the M.A. course, 30 in the M.Sc. course and 114 in the B.Com. course. The University submits that such admissions are impermissible if they are resorted to by ignoring the MKCL.

13. Having considered the fact situation as above and keeping in view that the University intends to maintain the prescribed standards of education, which includes providing standard education through legally appointed qualified teachers and infrastructural facilities, we are of the opinion that such measures cannot be interfered with by a judicial process. Even if

it is to be noted that the students have been admitted by the petitioner despite the impugned order, the University has assured that these students would be migrated to the nearest college and the educational curriculum of the students would not be hampered. They would, in addition, be given the option of joining another college.

14. In these circumstances, this petition cannot be entertained and stands disposed off.

15. We direct the University to complete the selection process by appointing the selection committees in view of Section 105 of the Maharashtra Public Universities Act, 2016, as expeditiously as possible and by adhering to sub-section (4) of Section 105.

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(ARUN R. PEDNEKER, J.)

(RAVINDRA V. GHUGE, J.)