

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9662 OF 2017

**WITH
CIVIL APPLICATION NO. 12976 OF 2021
IN
WRIT PETITION NO. 9662 OF 2017**

**WITH
CIVIL APPLICATION NO. 8378 OF 2020
IN
WRIT PETITION NO. 9662 OF 2017**

1. Kisan Vidya Prasarak Sanstha]
Shirpur, Taluka Shirpur,]
District Dhule, through its]
President Shri Tushar S/o Vishwasrao Randhe,]
Age : 44 years, Occu. Agri.,]
R/o Rasiklal Patel Nagar, Nimzari Naka, Shirpur,]
District Dhule.]
2. Kisan Vidya Prasarak Sanstha's Karmavir]
Venkatrao Tanaji Randhir Ayurved]
Mahavidyalaya, Boradi, Taluka Shirpur,]
District Dhule through its Principal.]
3. D.M.M. Ayurved College Yavatmal,]
Through its Secretary,]
Dr. Moreshwar Gawarshettiwar,]
Age : 52 Years, Occ. Service,]
R/o. Shivaji Nagar, Yavatmal, Dist. Yavatmal.]
4. Vidharbha Ayurved Mahavidyalaya,]
Through its Secretary,]
Sanjay S/o Krushnarao Chopkar,]
Age : 46 years, Occ. Service,]
5. Shree Gurudeo Ayurved Mahavidyalaya,]
Through its Secretary,]

Surprakash Jaiswal,]
 Age 54 years, Occ. Service,]
 R/o Gurukunj Ashram, Dist. Amravati 444 902.]

6. Shree Ayurved Mahavidyalaya]
 Through its Secretary,]
 Govindprasad Upadyaya,]
 Age : 70 years, Occ. Retired,]
 R/o. Dhanwatray Marg, Hanuman Nagar,]
 Nagpur – 440 024.]

... Petitioners.

Versus

1. The State of Maharashtra,]
 Through its Secretary,]
 Medical Education and Drugs]
 Department, Mantralaya, Mumbai]
2. The Director of AYUSH]
 Maharashtra State, Mumbai.]
3. The Maharashtra University of Health Sciences,]
 Nasik through its Registrar]
4. The Central Council of Indian Medicine,]
 New Delhi]

... Respondents.

Mr. S. R. Barlinge, Advocate for Petitioner.

Mr. S. B. Talekar, Special counsel a/w Mrs. M.A. Deshpande, AGP for Respondent Nos.1 and 2 – State.

Mr. Anandsingh Bayas, Advocate for Respondent No.3.

**CORAM : R.D. DHANUKA AND
 S. G. MEHARE, JJ.**

**RESERVED ON : 9th MARCH, 2022.
 PRONOUNCED ON : 23rd MARCH, 2022**

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

. Rule. Mr. Talekar, learned Special Counsel for respondent Nos.1 and 2 waives service. Mr. Anandsingh Bayas, learned counsel for the Respondent No.3 waives service. Rule is returnable forthwith.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners have prayed for a writ of certiorari for quashing and setting aside the impugned letter dated 6th June, 2017 issued by the respondent No.2 and writ of mandamus to direct the respondents to allow the petitioners to fill up the vacancies sanctioned by the Government as per the provisions of the Maharashtra University of Health Sciences Act, 1998 (for short, “the said University Act”).

3. The petitioners have also prayed for a writ of certiorari for quashing and setting aside the impugned order dated 18th August, 2017 passed by the State of Maharashtra and also the consequential directions issued by the Vice Chancellor of respondent No.3 University, dated 30th August, 2018. Some of the relevant facts for the purpose of deciding this writ petition are as follows :-

4. The petitioner No.1 is a registered society and Trust which runs petitioner No.2 Ayurved College. Respondent No.3 to 6 are impleaded as petitioner Nos.3 to 6 subsequently. There are about 19 Ayurved Colleges in the State of Maharashtra. Petitioners claim to have been filed this Writ Petition in representative capacity.

5. On 4th March 2014, the State Government issued a Government Resolution and accepted that all the 19 Ayurved and Unani Colleges in the State of Maharashtra need 603 posts of Lecturers to be filled in as per the

norms prescribed by the Central Council of Indian Medicine. It is the case of the petitioners that the State Government accordingly granted permission to fill up those vacancies in the colleges run by the petitioners. On 2nd June 2015, the State of Maharashtra issued another Government Resolution and permitted the petitioners to fill up 75% of the sanctioned vacancies. On 15th January 2016, the State of Maharashtra issued another Government Resolution thereby granting permission to fill up the sanctioned vacancies which was reduced to 50%. The petitioners thereafter submitted an advertisement for sanction with the Respondent No.3 University.

6. Respondent No.3 vide its letter dated 11th January 2016, permitted the petitioners to fill in the vacancies as per the roster. By a letter dated 18th April 2016, petitioner No.2 sought permission from the respondent No.2 to fill up six vacancies as mentioned in the said letter. The State of Maharashtra, however, did not grant permission to fill up the vacancies as requested by the petitioners. It is the case of the petitioners that the State of Maharashtra had always been reluctant in granting permission to fill up those vacancies. Respondent No.3 University extended the period of advertisement from time to time. According to the petitioners, because of the such approach on the part of respondent No.3 University and the State of Maharashtra, the petitioners are not in a position to fill up the vacancies.

7. On 24th July 2017, the petitioners filed this petition for various reliefs. During the pendency of the petition, the petitioners applied for amendment to the Writ Petition which was permitted by this Court by an Order dated 30th October 2018.

8. Mr. Barlinge, learned counsel for the petitioners invited our attention to various documents and some of the averments made in the reply filed by the State of Maharashtra as well as by respondent No.3 University. It

is submitted that by the impugned communication, the State Government tried to encroach upon the rights of the petitioners to recruit the teaching staff in their Institutions. The said letter was issued by the Director of AYUSH.

9. Learned counsel invited our attention to the interim order dated 18th June 2018 passed by this Court in this Petition directing that the respondents shall not fill in the post of the petitioner's institution and the institutions on behalf of whom, the writ petition is filed till next date. He submits that inspite of the said interim relief granted by this Court, the respondents are not permitting the petitioners to conduct the process of recruitment in the colleges run by the petitioners. The University was required to constitute a Selection Committee in exercise of powers conferred under Section 16(8) of the University Act. He submits that the said Selection Committee, however was constituted as per the Direction No.2 of 2018 which included only the staff of State Government, contrary to the Statutes framed by the University in 2001.

10. It is submitted that the members of the Selection Committee being Government employees would not be impartial and would be under the pressure of the Government. It is submitted that the recruitment process earlier carried out was pursuant to the Direction No. 25 of 2001. Learned counsel relied upon the directions issued as per the law laid down by the Hon'ble Supreme Court in the case of *Brahmo Samaj Education Society and others Vs. State of West Bengal and Ors.*, reported in (2004) 6 SCC 224, in support of his submission that the Government cannot be allowed to encroach upon the rights of the Management to make recruitment just because it receives grant in aid for its colleges.

11. Learned counsel for the petitioners submits that the judgment of the Hon'ble Supreme Court in case of *Sk. Mohd. Rafique Vs. Managing*

Committee, Contai Rahamania High Madrasah and Ors. reported in (2020) 6 SCC 689, is clearly distinguishable in the facts of this case and does not apply to the facts of this case.

12. It is submitted that the Government of Maharashtra has no power to interfere with the powers of petitioners to recruit the staff members in the colleges run by them. He submits that in this case the State Government has not amended the provisions of the said University Act, but has issued directions by executive fiat to the University to form a Selection Committee of Government Officers which is not permissible. He relied upon the Section 61(3), (4) of the said University Act and would submit that the said provisions clearly provides for the procedure for appointment of the staff by the management. He submits that the powers appears to have been exercised by the State of Maharashtra under Section 5(dd) and 5(ww) of the said University Act which provisions are not applicable. Even otherwise such provisions do not allow the Government or the University to interfere with the recruitment process to be carried out by the colleges.

13. Mr. Talekar, learned Special Counsel for the respondent Nos.1 and 2 placed reliance on sections 5(dd), 9(3) and 61(3) of the said University Act and submits that the appointment of the Selection Committee and mode of appointment of principals, teachers and the employees of affiliated colleges are prescribed under the provisions of the said University Act.

14. The respondent No.3 University has framed various Statutes from time to time providing for the mode and manner in which the recruitment to various posts can be made by the colleges including composition of the Selection Committee and mode of appointment of teachers. He submits that the Statutes of 2014 made a distinction between the selection committee for private unaided colleges and private aided colleges. Learned counsel placed

reliance on the Statute No. 9.1(1b) of 2014 and would submit that it is clear beyond reasonable doubt that the Selection Committee for private aided post of teachers and private aided affiliated colleges/ recognized institute shall be such as prescribed by the State Government from time to time, however subject to condition that the subject expert shall be nominated by the Vice Chancellor and the Selection Committee on the request of the colleges.

15. Learned counsel invited our attention to various Statutes framed by the respondent No.3 University and would submit that in the Statutes framed on 30th August 2018, the composition of the Selection Committee and mode of appointment of teachers came to be prescribed under Direction No.2 of 2018 issued by the Vice-Chancellor of the University as well as in the Government Resolutions dated 28th August 2017 and 22nd January 2018 issued by the Medical Education and Drugs Department.

16. It is submitted by the learned counsel that, the Writ Petition filed by this petitioners is not maintainable. There is no challenge to the Constitutional validity of Section 61(3) of the said University Act. Similarly there is no challenge to the Direction No.2 of 2018 issued by the Vice-Chancellor of University as against the Government Resolution dated 28th August 2017 and 22nd January 2018 issued by the State of Maharashtra. It is submitted by the learned counsel that though the petitioners have made averments in the body of the writ petition that this writ petition is filed in a representative capacity, there is no prayer seeking permission to file the petition in representative capacity.

17. It is submitted by the learned counsel that the added petitioner Nos. 3 to 6 are Ayurved Colleges from Yavatmal, Amravati and Nagpur districts. These colleges instituted the writ petition in the High Court before the Aurangabad Bench of this Court and more particularly through its so

called Secretary. There is no post of Secretary in any of those Ayurved Colleges. Copies of Resolutions in the nature of authorization to institute petitions are not filed on record. The petition filed by Ayurved Colleges falling under the territorial jurisdiction of Nagpur Bench, could not have been filed before Aurangabad Bench. He submits that entire writ petition does not have adequate pleadings and grounds of challenge to the *vires* of the University Act, Direction (Statute), Government Resolutions and thus no relief as claimed by the petitioners can be granted by this Court.

18. It is submitted that in the Direction No. 25 of 2001, under clause 9 thereof a provision for appointment of Selection Committee was made for the purpose of making recruitment of the staff members in the colleges. The said directions were subsequently replaced in the year 2012 i.e. by direction No.2 of 2012. He relied upon clause 10 thereof. He submits that under the directions issued by the State Government, two different types of candidates were prescribed i.e. one for aided colleges and another for unaided colleges. He submits that under clause 9(b), the Vice Chancellor of the University is empowered to nominate expert in the said Committee on the request of the college. In this case no such request is made by any of the petitioners.

19. Learned counsel for the respondent Nos.1 and 2 invited our attention to direction No.1 of 2017 and more particularly clause 7(b) thereof and submits that under the said provision, the Selection Committee for the aided posts of teachers in the private aided affiliated colleges or recognized institutions shall be such, as prescribed by the State Government from time to time. However, the subject expert shall be nominated by the Vice Chancellor on the Selection Committee and his attendance shall be made mandatory to constitute the quorum of the Selection Committee. Petitioners have not challenged any of these directions issued by way of statutes issued by

the respondent No.3 University from time to time.

20. Learned counsel for the respondent Nos.1 and 2 invited our attention to direction No. 02 of 2018 and would submit that by the said direction which are called, 'Constitution of selection committee for the appointment of teachers in the affiliated private Government aided Ayurveda and Unani colleges', the Selection Committee for the teaching post in the private Government aided Ayurveda and Unani Colleges under the Directorate of Ayurveda, State Government is prescribed of seven members. He submits that, the Director, Directorate of AYUSH who is one of the member of the said selection, is the senior most teacher of the college. He submits that the appointment of member to be expert in the concerned field is at the recommendation of the college. He submits that there is no substance in the submission of learned counsel for the petitioners that the Committee and the Selection Committee appointed by the State of Maharashtra are of the Government staff and does not include any independent person.

21. Learned counsel for the respondent Nos.1 and 2 invited our attention to prayer clause (A) of the present Petition and would submit that impugned letter dated 6th June, 2017 issued by the respondent No.2 is consequential to the directions of the University. The impugned letter dated 6th June 2017 which is consequential to various provisions of the statutes and the directions issued by the State of Maharashtra can not be independently challenged.

22. In so far as prayer clause (B) of the present Petition is concerned, it submitted that the petitioners can not be allowed to fill up the vacancies sanctioned by the Government contrary to various provisions of the said University Act, directions issued by the State of Maharashtra and as per the provisions of the Statutes framed by the respondent No.3 University. In so far

as prayer clause (BB) of Writ Petition inserted during the pendency of the petition is concerned, it is submitted that the said prayer is not at all relevant on the issue as to whether the petitioners to be allowed to recruit any of the staff members without any interference of the State of Maharashtra or the respondent No.3 University or the recruitment of staff can be only done in the mode and manner prescribed by the State of Maharashtra and the University. He submits that the directions issued by Vice Chancellor on 30th August, 2018 is not consequential to any directions dated 18th August 2017. No foundation to challenge the directions issued by the University is raised in the Writ Petition.

23. It is submitted by the respondent Nos.1 and 2 that under Section 61(3) of the said University Act, powers is conferred on the State Government and University or both, for appointment for principals, teachers and other employees or affiliated colleges. It is submitted that under Section 9(3) of the said University Act, the State Government is empowered to prescribe a 'Standard Code' for the classification, manner and mode of selection and appointment, absorption of teachers and employees rendered surplus, reservation of posts in favour of members of Scheduled Castes, Scheduled Tribes and other backward classes, duties, workload, pay, allowances, post-retirement benefits, other conditions of service of the officers, teachers and other employees of the University etc. He submits that under Section 49(6), the Chancellor also has either *suo motu* powers or on the advice of the Government, may direct the University to make provisions in Statutes in respect of any matter specified by him.

24. Learned counsel for the respondent No.1 placed reliance on Section 5(w) and states that under the said provision, the University has power and duty to comply with and carry out any direction issued by the Government from time to time, with reference to the powers, duties and

responsibilities of the University. He submits that, the University is thus bound to follow the directions issued by the State of Maharashtra from time to time under the provisions of the said University Act. Learned counsel for the respondent Nos.1 and 2 placed reliance on the judgment of the Hon'ble Supreme Court in case of ***State of Kerala and others Vs. Shibu Kumar P.K. and Another*** reported in ***(2019) 13 SCC 577*** and in particular paragraphs 4 and 5 and would submit that in the absence of adequate pleadings and grounds of challenge to the *vires* of provision, no issues relating to the provisions of such Act can be considered.

25. Learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in case of ***Dr. Thingujam Achouba Singh and Others Vs. Dr. H.Nabachandra Singh and Others*** reported in ***2020 SCC Online 370*** and in particular paragraphs 13 and would submit that since there are no pleadings or foundation of challenging the *vires* of the provisions of University Act, this Court cannot consider the challenge to the provisions of the said Act on the basis of arguments advanced across the bar.

26. Learned counsel for the respondent Nos.1 and 2 invited our attention to the averments made in some of the paragraphs of affidavit-in-reply filed by the State Government. He invited our attention to paragraph 3 of the judgment of the Hon'ble Supreme Court, in case of in the case of ***Brahmo Samaj Education Society and others***, (supra) and would submit that in that matter the Supreme Court had considered the issue relating to NET/SET criteria applied by the State Government and the teacher not having complied with the said criteria was not granted approval. He submits that in this case the said NET/SET criteria is not applicable to the teachers in Ayurved Colleges. The appointment of the Selection Committee as directed by the State of Maharashtra and by the University was thus mandatory.

27. Learned counsel for the Respondent Nos.1 and 2 relied upon by the Judgment of this Court in case of ***Stree Shikshan Prasarak Mandal, Nagpur and Ors Vs. State of Maharashtra and Ors.*** reported in ***2019 (4) Mh.L.J. 223*** and in particular paragraph no.14, 15 and 45 and would submit that no back door entry in the Government employment is permissible. He also relied upon the orders passed by this Court in PIL No.08 of 2015, adverted to by the Division Bench in the case of a judgment reported in 2019 (4) Mh.L.J. 223.

28. Learned counsel for the respondent Nos.1 and 2 placed reliance on the judgment of the Hon'ble Supreme Court in case of ***TMA Pai Foundation Vs. State of Karnataka*** reported in ***(2002) 8 SCC 481*** and more particularly in paragraphs 71 to 73 and would submit that the said principles laid down by the Hon'ble Supreme Court in the said judgment are squarely applicable to the facts of this case. The directions issued by the State Government and the University are in conformity with the principles laid down by the Hon'ble Supreme Court in case of ***TMA Pai Foundation*** (supra).

29. Mr. Talekar, learned special counsel for respondent Nos.1 and 2 submits that the judgment of the Hon'ble Supreme Court delivered by the 11 Judge Bench in the case of ***TMA Pai Foundation*** (supra) can not be diluted by three Judge Bench in case of ***Brahmo Samaj Education Society and others, (supra)***. It is submitted by the learned counsel that, there are large number of complaints received from members of public about illegalities committed by the educational institutions while recruiting the teachers. Considering these complaints, the Government took policy decision to constitute the Selection Committee and provide procedure of selection which shall be fair and transparent. The object behind amending Statutes or the Government Resolutions was not to arrogate the powers to itself by the Government but to weed out the corruption and malpractices in the matter of the appointment of teachers and their approvals. He relied upon the preambles/introduction to

the Government Resolutions dated 28th August 2017, 22nd January 2018 and 28th August 2018 as well as paragraph Nos. 18 and 19 in the judgment in case of ***Stree Shikshan Prasarak Mandal, Nagpur and Ors. Vs. State of Maharashtra and Ors.***

30. It is submitted by the learned special counsel that the statutes framed by the respondent No.3 University pertains to academic and educational character of the institution and to ensure uniformity, efficiency, excellence in educational courses and are thus valid and do not violate any of the provisions of the Constitution of India. He submits that no case is made out by the petitioners for any judicial interference with the directions issued by the State Government or by the University. He submits that the State Government or other authority can always prescribe the minimum qualification and experience having bearing on the merit upon the individual being appointed as a teacher or principal of any educational institutions.

31. Mr. Anandsingh Bayas, learned counsel for the respondent No. 3 University invited our attention to the averments made by his client in the affidavit-in-reply dated 25th November 2019 and would submit that the State Government is empowered to issue directions to the University under the provisions of under Section 61(3) read with Section 5(wv) and Sections 16(3) (7), (8) of the said University Act and such directions issued by the State Government are binding upon the University. He adopted the submissions made by the State Government.

32. Mr. Barlinge, learned counsel for the petitioners submits that, none of these judgments relied upon by Mr. Talekar, learned special Counsel for respondent Nos.1 and 2 are applicable to the facts of this case. The petitioners in this matter have challenged the provisions of the University Act in this case. The State Government has not amended the provisions of the

University Act so as to give any such directions or to take away the rights of the colleges to make the recruitment of its staff members. He submits that the principles laid down by the Hon'ble Supreme Court in case of ***Brahmo Samaj Education Society and others, (supra)***, only apply to the facts of this case. The State Government can not be allowed to issue such directions by executive fiat by directing the University to frame statutes or to issue further directions or to issue similar directions without any authority of law.

Reasons and Conclusions :

33. We shall first decide the objection raised by the learned Special Counsel for the State of Maharashtra that this writ petition itself is not maintainable.

34. A perusal of the prayer clause (A) indicates that, the petitioner has impugned the directions issued by the respondent No. 2 vide letter dated 06th June, 2017 in respect of the petitioners and the similarly situated colleges. There is no challenge to the constitutional validity of Section 61(3) of the said University Act. There is also no challenge to the Direction No. 2 of 2018 issued by the Vice Chancellor of the said university, or to the Government Resolution dated 28th August, 2017. The Government Resolution dated 22nd January, 2018.

35. In our view, without challenging constitutional validity of Section 61(3) of the said University Act and without challenging the Direction No. 2 of 2018, G. R. dated 28th August, 2017 and G. R. dated 22nd January, 2018, the petitioners could not have challenged only the impugned letter dated 06th June, 2017 issued by the respondent No. 2 in isolation. The said letter dated 06th June, 2017 is issued by the respondent No. 2 based on the provisions of Section 61(3) of the said University Act. In our view, Mr. Talekar, the learned

Special Counsel for the State of Maharashtra is right in the submission. On this ground itself no reliefs can be granted to the petitioners.

36. The learned Special Counsel for the State of Maharashtra has also raised an issue of maintainability of this petition is not maintainable by petitioner Nos. 3 to 6, who are Ayurved Colleges at Yeotmal, Amravati and Nagpur districts and per-say cannot institute the writ petition in this High Court, Bench at Aurangabad. The petitioner Nos. 3 to 6 were allowed to be impleaded by an order passed by this Court as petitioner Nos. 3 to 6. The said order has not been impugned by the State of Maharashtra. Since this Court has proposed to decide the matter on merits, we do not propose to decide the said issue as to whether the petitioner Nos. 3 to 6 could have filed this petition before Aurangabad Bench of this Court or not.

37. In so far as prayer clause (B) is concerned, the petitioners have prayed for a writ of mandamus to direct the respondents to allow the petitioners to fill up the vacancies sanctioned by the Government as per the provisions of the Act and the Statutes framed thereunder. In prayer clause (BB), the petitioners have prayed for writ of certiorari for quashing and setting aside the impugned order dated 18th August, 2017 passed by the State of Maharashtra and also have prayed for quashing and setting aside consequential directions issued by the Vice Chancellor of the respondent No. 3 university dated 30th August, 2018. We shall deal with both the prayers in the later part of this judgment.

38. We shall deal with the issue as to whether the State Government as well as the respondent No. 3 University are entitled to issue any directions for appointment of selection committee for making recruitment of the staff in the petitioner No. 2 college or not. A perusal of the preamble to the said University Act indicates that, said University Act is enacted to establish and

incorporate an independent University of Health Sciences for the purpose of ensuring proper and systematic instruction, teaching, training and research in modern medicine and Indian Systems of Medicine in the State of Maharashtra and to have balanced growth in the medical sciences so also an uniformity in various courses in medical faculty in the State, and to provide for matters connected therewith and incidental thereto.

39. Under Section 4 of the said University Act it is provided that the objects of the University shall be to disseminate, create and preserve knowledge and understanding by teaching, research, extension and service and by effective demonstration and influence of its corporate life on society, in general, and in particular the objects, which are prescribed in the said provision. Section 4(a) of the said University Act provides that, one of the object is to carry out its responsibility of creation, preservation and dissemination of knowledge. Section 4(h) of the said University Act provides that, the objection is to provide for efficient and responsive administration, scientific management and develop organization of teaching and research.

40. Section 4(i) of the said University Act provides that the object is to promote acquisition of knowledge in rapidly developing and changing society and to continually offer opportunities of upgrading knowledge, training and skills in the context of innovations, research and discovery in all fields of human endeavour by developing educational network related to Health Sciences with use of modern communication media and technologies appropriate for a learning society. Section 4(k) provides for the object to impart education and training to achieve the goal of physical, mental and spiritual health of every individual.

41. Section 5 of the said University Act prescribes powers and duties of the

university. Section 5(f) provides that the university shall have powers and duties to create posts of directors, principals, teachers and other teaching or non-vacation academic posts required by the University with the prior approval of the State Government and to prescribe their qualifications and make appointments thereto. Section 5(h) provides that, the university shall have powers and duties to create non teaching skilled, administrative, ministerial and other posts and prescribe the qualifications and pay scales for such posts, with prior approval of the State Government and to make appointments thereto.

42. Section 5(dd) of the Universities Act provides that the university has power to laid down for teachers and University teachers, service conditions including code of conduct, workload, norms of performance appraisal, and such other instructions or directions as, in the opinion of the University, may be necessary in academic matters.

43. Under Section 5(ww) of the said University Act provides for an obligation of the University to comply with and carry out any directives issued by Government from time to time, with reference to powers, duties and responsibilities of the University prescribed in Section 5 of the said University Act.

44. Under Section 9(3) of the said University Act, the State Government is empowered to prescribe a standard Code in accordance with provisions contained in the said University Act for the purpose of securing and maintaining uniform standards by issuing notification in the Official Gazette, for the classification, manner and mode of selection and appointment, absorption of teachers and employees rendered surplus, reservation of posts in favour of members of the Scheduled Caste, Scheduled Tribes and Other

Backward Classes, duties, workload, pay, allowances, post-retirement benefits, other benefits, etc. It is provided in the said provision that, when such Code is prescribed, the provisions made in the Code shall prevail and the provisions made in Statute, Ordinances, Regulations and Rules made under this Act for matters included in the Code shall to the extent to which they are inconsistent with the provisions of the code, be invalid.

45. Under Section 9(4) of the said University Act, the State Government is empowered to issue directions to the university for proper exercise of such powers or performance or such duties or to comply with the orders in case of failure of the university to exercise powers or perform duties specified in section 5 or where the university has not exercised such power or performed such duties adequately, or where there has been failure to comply with any order issued by the Government, it shall be duty of the University to comply with such directions as may be issued by the State Government.

46. Under Section 49(1) of the said University Act, it is provided that the Statute may be made, amended or repealed by the Senate in the manner provided in the said Section. Section 49(6) of the Act provides that notwithstanding anything contained in Sub Section (1) to (5) of Section 49, the Chancellor either *suo motu* or on the advice of the Government, may, direct the University to make provisions in Statutes in respect of any matter specified by him and if the Senate fails to implement such a direction within sixty days of its receipt, the Chancellor may, after considering reasons, if any, communicated by the Senate for its inability to comply with such direction, make or amend Statutes suitably.

47. Under Section 61(3) of the said University Act, it is provided that, the selection committee and mode of appointment for principal, teachers and

other employees of affiliated colleges shall be such as may be prescribed. Under Section 61(4) of the said University Act, it is provided that, the management of any affiliated college, shall before proceeding to fill in vacancies of teachers and other employees in accordance with the prescribed procedure shall ascertain from the University whether there is any suitable person available on the list of surplus persons maintained by the University for absorption in other colleges and in the event of such person being available, the management shall appoint that person.

48. It is the case of the Government of Maharashtra that, it has repeatedly received complaints about irregular appointments and improper activities adopted by the appointees of the educational institutions while recruiting the teachers. This Court in P. I. L. No. 08 of 2015 has made observations with respect to the complaints received about the irregular appointments and improper methods of selection made by the colleges. The Council of Ministers took a policy decision to constitute a selection committee and provide a procedure for selection of teachers, which would be fair and transparent. We are inclined to accept the submissions made by Mr. Talekar, the learned Special Counsel for the State of Maharashtra that the object behind amending Statute or the Government Resolution was not to arrogate the powers itself by the Government, but to weed out the corruption and malpractices in the matter of the appointment of teachers and their approvals.

49. The preamble read with the Government Resolution dated 28th August, 2017, 22nd January, 2018 and 28th August, 2018 also supports the case of the State of Maharashtra for need of the constitution of selection committee for recruitment of staff by the University covered by the said University Act. This Court in the said P. I. L. No. 08 of 2015 in its order dated 24th June, 2015 has held that, it is well settled principle of law that a back door entry in the public

employment is not permissible. If the salaries of the staff in the private management are paid from the public exchequer, there is no reason as to why the employment in such management should not be only on the criteria of merit. This Court observed that, the State Government in order to bring about the fairness in the selection process of the staff whose salary is paid from the public exchequer, is expected to frame such a policy, which would ensure that the selection is only on the basis of merit and it should be ensured that the malpractices are avoided.

50. Mr. Talekar, the learned Special Counsel for the State Government placed reliance on paragraphs Nos. 71 to 73 of the judgment delivered by Eleven Judges Bench of the Hon'ble Supreme Court in a case of **TMA Pai Foundation Vs. State of Karnataka** reported in ***(2002) 8 SCC 481***, in which the Constitution Bench struck a fine balance between the right to establish and administer educational institutions under Article 19(1)(g) *vis-a-vis* imposition of restrictions in the interest of the general public, warranting no judicial interference in the absence of challenge to the Act, Statutes framed thereunder and the policy of the government.

51. It is held by the Hon'ble Supreme Court that, the State or other controlling authorities can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or principal of any educational institution. Regulations can be framed governing service conditions for teaching and non-teaching staff for whom aid is provided by the State, however, without interfering with the overall administrative control of the management over the staff.

52. A perusal of the provisions referred to aforesaid would clearly indicate

that, the State Government has ample powers to issue various directions framed from time to time relates to recruitment of staff members including teachers by the University governed by the said Universities Act and to make provisions by issuing a Statute including appointment of selection committee for the purpose of making recruitment of the staff required to be deployed by such universities to maintain the transparency and avoid any allegations of corruption and malpractices. None of these powers prescribe under the said University Act and conferred on the State Government have been challenged by the petitioners in this writ petition. The respondent No. 3 university has framed various statutes from time to time providing for the mode and manner in which the recruitment to various posts can be made by the colleges including composition of the selection committee and mode of appointment of teachers.

53. A perusal of Statute of 2014 clearly indicates that a distinction between the selection committee for private unaided colleges and private aided colleges is made in the said Statute. The Statute No. 9.1(1b) of 2014 clearly provides that the selection committee for private aided posts of teachers and private aided affiliated colleges/recognized institute shall be such as prescribed by the State Government from time to time, however, subject to rider that the subject expert shall be nominated by the Vice chancellor and the Selection Committee on the request of the colleges. In this case, none of the colleges have made any request for appointment of the subject expert, who shall be nominated by the Vice Chancellor and the Selection Committee.

54. A perusal of direction No. 25 of 2001 and more particularly clause 9 thereof indicates that the provision is made for appointment of Selection Committee for the purpose of making recruitment of the staff members in the various colleges. The said directions were subsequently replaced in the year

2012 by Direction No. 2 of 2012. Under clause 10 of the said Direction No. 02 of 2012, it is provided that the directions issued by the State Government prescribes for two different types of candidates i. e. one for aided colleges and another for unaided colleges. Under clause 9(b) of the said direction No. 02 of 2012, the Vice Chancellor of the University is empowered to nominate expert in the said committee on the request of the college.

55. A perusal of the Clause 7(b) of the Direction No. 01 of 2017 indicates that Selection Committee for aided post of teachers in the private aided affiliated colleges or recognized institutes shall be such as prescribed by the State Government from time to time subject to a rider that the subject expert shall be nominated by the Vice Chancellor on the Selection Committee and his attendance shall be made mandatory to constitute the quorum of the Selection Committee. None of these powers prescribe and vested in the State Government or the University are challenged by the petitioners in this writ petition.

56. Under Direction No. 02 of 2018, the Selection Committee for the teaching post in the private Government aided Ayurveda and Unani Colleges under the Directorate of Ayurveda, State Government is consisting of seven members. The Director, Directorate of AYUSH is one of the member of the said selection committee, who has to be a senior most teacher of the college. Out of seven members committee, one member has to be an expert member, whose name can be suggested by the university for inclusion in the Selection Committee. We are thus not inclined to accept the submissions made by Mr. Barlinge, the learned counsel for petitioners that, the said selection committee consists of the Government Staff, who would not be impartial while recommending any members of the staff in any of the universities. Even after few members out of the said Selection Committee of seven members are

appointed by the State Government or employed with the State Government, the constitution of the Selection Committee on such ground cannot be considered as invalid, merely on the apprehension of petitioners that, such Government employees would not be impartial while conducting the selection process of the staff members of the university.

57. The impugned letter dated 06th June, 2017 issued by the respondent No. 2 is consequential to the directions of the university and also consequential to various provisions of the statute and directions issued by the State of Maharashtra. In absence of any challenge to the provisions of the said University Act or the Statutes or the Directions issued by the Vice Chancellor from time to time, the said letter dated 06th June, 2017 issued by the AYUSH cannot be challenged individually. The petitioner has also not challenged the power of the State Government U/Sec. 9(3) of the said University Act which prescribe a standard code providing for classification, manner and mode of selection and appointment, absorption of teachers and employees rendered surplus, reservation of posts, etc.

58. The Hon'ble Supreme Court Sk. Moh. Rafique Vs. Managing committee, Contai Rahmania High Madarsah and others (supra) has held that, if regulations made in the true interests of efficiency of instructions, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Excellence and merit must be governing criteria both in relation to the intake of students and the appointment of teacher. A meritorious candidate for appointment as a teacher will generate an atmosphere of qualitative progress and sense of achievement commensurate with societal objectives and ideology and such appointments will be in true national interest. The Hon'ble Supreme Court in a case of State of Kerala and others Vs. Shibu Kumar P. K. and another (supra) has held that, the first and foremost, in the absence of adequate pleadings and grounds of challenge to

the vires of the Rules in the writ petition, the High Court ought not to have considered that issue and given its verdict or opinion. In this matter, the petitioners have not challenged the vires of any of the provisions of the said University Act or has not impugned validity of any of the Statutes framed by the University. Even otherwise, the pleadings filed by the petitioner are totally vague and thus cannot be considered even for the purpose of impugning the order dated 18th August, 2017.

59. In so far as the judgment of the Hon'ble Supreme Court in a case of **Brahmo Samaj Education Society and others Vs. State of W. B. and others** reported in *(2004) 6 SCC 224* relied by the petitioner is concerned, the Hon'ble Supreme Court in the judgment was considering a condition imposed by the State making the condition of obtaining NET/SLET by a candidate to make himself eligible for appointment as a teacher in an aided institute. The Hon'ble Supreme Court in the said judgment after adverting to the judgment of Eleven Judges in a case of **TMA Pai Foundation Vs. State of Karnataka** (supra) held that, the State can very well prescribe basic qualifications for appointment of teachers. The Hon'ble Supreme court considered the provisions of the University Grants Commission Act, 1956, in which qualifications were provided for a teaching post in an university by passing regulations. In that context the Hon'ble Supreme Court held that, only a person who is qualified with NET/SLET will be eligible to be appointed as a teacher in an aided institution. It is required to be a basic qualification for a teacher. In that context the Hon'ble Supreme Court held that merely because petitioners were receiving the aid, their autonomy of administration cannot be totally restricted and institution cannot be treated as Government owned one. It is, however, clarified that State can impose such conditions as are necessary for the proper maintenance of standard of education and to check maladministration.

60. In our view, the said judgment would not assist to the case of the petitioners in the facts of this case. The State Government is vested with various powers to issue directions to the university to frame statutes or to issue directions to the colleges while making recruitment of staff in their respective colleges. The powers vested in the State Government under the said Universities Act, to prescribe conditions as are necessary for proper maintenance of standards of education and to check maladministration cannot be challenged by the petitioners.

61. The said judgment in the case of **Brahmo Samaj Education Society and others Vs. State of W. B. and others** (supra) has been rendered after adverting to the judgment of the Constitutional Bench in a case of **TMA Pai Foundation Vs. State of Karnataka** (supra). In this case, there is no such condition imposed by the State Government that the candidate for being appointed as a teacher could have passed NET/SLET examination. The State Government has directed the University to form a selection committee. A selection committee is consisting of impartial members. Be that as it may, in the case on hand there is no individual grievance against any member of the selection committee by the petitioners or any other college.

62. A Division Bench of this Court in a case of **Stree Shikshan Prasarak Mandal Nagpur and others Vs. State of Maharashtra and others** (supra) has upheld the validity of the amendments to the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules providing for appointment of staff and their qualification and more particularly Rule 6(2) and (3) of the M. E. P. S. Rules, which deals with prescribing additional qualification and the procedure for recruitment. This Court held that, the rules cannot be struck down on the ground of lack of competency on the part

of the State Government.

63. The Hon'ble Supreme Court in a case of Dr. Thingujam Achouba Singh and others Vs. Dr. H. Nabachandra Singh and others (supra) has held that, High Court has committed an error in going into the validity of the Rules, in absence of any challenge to the same. In this case, there is no challenge to the vires of any of the provisions of the said University Act or Ordinance issued by the university or for directions issued by the State Government. In absence of any such pleadings relating to the challenge to the vires of provisions of the said University Act or the Statute, this Court cannot decide the validity of any of the provisions of the Universities Act or the Ordinance. The principle laid down by the Hon'ble Supreme Court in the said judgment would apply to the facts of this case. We are respectfully bound by the said principles.

64. The learned counsel for the university also placed reliance on the provisions of Section 61(3) read with Section 5(ww) and Sec. 16(3), (7) and (8) of the said Universities Act and urged that such directions issued by the State Government under this provision are binding upon the university. Mr. Barlinge, the learned counsel for the petitioner could not distinguish any of the judgment relied upon by Mr. Talekar, the learned Special Counsel for the State of Maharashtra.

65. In our view, no case is made out by the petitioners for any judicial interference with the directions issued by the respondent No. 2 or by the university. The State Government is empowered to prescribe minimum qualification and experience and other conditions bearing on the merit of an individual for being appointed as a teacher or principal of any educational institution.

66. In our view, the writ petition filed by petitioners is totally devoid of merits. We accordingly pass following order :-

(a) The Writ Petition No. 9662 of 2017 is dismissed. No order as to costs. Rule is discharged.

(b) In view of disposal of writ petition, Civil Application No. 8378 of 2020 and Civil Application No. 12976 of 2021 would not survive and are accordingly disposed of.

[S. G. MEHARE, J.]

[R. D. DHANUKA, J.]

bsb/March 22