

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

WRIT PETITION NO. 14872 of 2021

Shri Sai College of Engineering
Sai Nagar, Gat No. 80, Pardari,
Kachner Road, Near Beed Bypass
Via Deolai, Aurangabad,
through its Chairman
Vikrant s/o. Jagannath Jadhav,
Age 41 years, Occ. Business,
R/o. Swami Building, Seven Hills
Jalna Road, Aurangabad,
Tq. and Dist. Aurangabad.

... PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Higher & Technical Education
Mantralaya, Mumbai-32.
2. The Director of Technical Education,
Maharashtra State,
3, Mahapalika Marg, Mumbai.
3. The Joint Director of Technical Education
Aurangabad Region, Aurangabad
4. The Registrar,
Dr. Babasaheb Amhedkar Marathwada
University, Aurangabad.
5. All India Council for Technical
Education (AICTE)
7th Floor, Chandralok Building,

Janpath, New Delhi, 110 001.
through its Secretary.

... RESPONDENTS

Advocate for Petitioner : Mr. A.M. Karad
GP for Respondent No. 1 : Mr. D.R. Kale
Advocate for Respondent No. 4 : Mr. S.S. Tope
Advocate for Respondent No. 5 : Mr. C.V. Dharurkar
Advocate for Applicant : Mr. V.D. Hon Senior Counsel
i/b. Mr. A.D. Hon

**CORAM : C.V. BHADANG &
SANDIPKUMAR C. MORE, JJ.**

DATE : 22 JULY, 2022

JUDGMENT [PER C.V. BHADANG, J] :-

Rule made returnable forthwith. The learned counsel for the respondents waives service. By consent of parties, heard finally at the stage of admission.

2. By this petition, under Article 226 of the Constitution of India, the petitioner is praying for the following substantive reliefs :-

“[B] By issuing appropriate Writ or directions, the impugned Order dated 21.12.2021 passed by the Respondent – University withdrawing affiliation granted to the Petitioner – Institute be quashed and set aside.

[C] By issuing appropriate Writ or directions, the Respondent – Dr. Babasaheb Ambedkar Marathwada University, Aurangabad be directed to issue necessary No Objection Certificate to the Petition – Institute

for the academic year 2021-22.

[D] By issuing appropriate Writ or directions, the Respondents – State of Maharashtra and Director of Technical Education, Maharashtra State, Mumbai be directed to include name of the Petitioner – Institute in the Centralized Admission Process and further allot the quota of students to the Petitioner – Institute for admission to First year; as well, to the Direct Second Year of the Engineering Courses for the academic year 2021-22.”

3. Brief facts are that in the year 2009-10, the All India Council for Technical Education (AICTE) had granted approval to the petitioner institute for opening an Engineering College. The respondent University had granted No Objection Certificate (NOC) and affiliation and the same is continued every year on deposit of the requisite fees.

4. On 25.6.2021, the AICTE granted extension of approval (EOA) to the petitioner institute for the academic year 2021-22 with an intake capacity as indicated in approval letter. The Director of Technical Education (DTE), Maharashtra State, Pune has included the name of the petitioner in the Centralized Admission Process (CAP). Thereafter, the petitioner applied to the State Government as well as to the respondent University for granting necessary permission and No Objection Certificate (NOC) for the academic year 2021-22 which has been refused by the respondent University vide

communication dated 21.12.2021, which brings the petitioner to this Court.

5. According to the petitioner, one Mr. Sunil Thakare had made a complaint against the petitioner Institute to the University raising objection for grant of NOC to the petitioner institute for the academic year 2021-22. The petitioner had filed a reply to the queries raised by the competent committee of the respondent University.

6. On 8.11.2021, the respondent University issued a letter to the petitioner pointing out certain deficiencies as set out in the letter, mostly on the infrastructural aspect and putting the petitioner in “No Admission Category”.

7. It appears that the petitioner filed Writ Petition No. 13764 of 2021 before this court challenging the communication/letter dated 8.11.2021 issued by the respondent University.

8. In a meeting held in the office of the Director of Technical Education on 25.11.2021, it was mentioned that while scrutinizing the documents, it was revealed that a forged No objection Certificate (NOC) by the University for the academic year 2021-22 was uploaded by one of the staff members of the petitioner institute, which in fact, was not issued by the respondent University. On 26.11.2021, the petitioner tendered apology to the University as well as the Joint Director of Technical Education claiming that it was an “inadvertent mistake” and decided to withdraw the Writ Petition

No.13764 of 2021, with liberty to file fresh petition.

9. In the meantime, the respondent University again issued a show cause notice dated 18.11.2021 to the petitioner pointing out certain deficiencies and asking the petitioner institute to comply with the same within a period of 30 days, failing which action was contemplated against the petitioner as per the provisions of the Maharashtra Public Universities Act, 2016.

10. The petitioner Institute filed reply dated 2.12.2021. It was contended that the petitioner institution is affiliated to the University since the year 2009 and various committees of the University have visited the Institute from time to time and inspected the facilities and the affiliation is in force from 12 years. Similarly, it was contended that the Expert Visiting Committees (EVC) of AICTE have also visited the institution and have verified about the infrastructural and other educational facilities available and the AICTE has granted Extension of Approval (EOA). The petitioner enclosed the compliances made in a tabular form with reference to each of the deficiencies pointed out. In short, it was contended that the required infrastructural facilities are in place and if not, the petitioner is ready and willing to rectify any shortcomings.

11. It appears that as no decision was taken on the show cause notice, the petitioner approached this Court in W.P. No. 13764 of 2021. This Court by order dated 16.12.2021 directed the respondent –

University to take decision, on the show cause notice by 21.12.2021.

12. It is in these circumstances that looking to the direction to decide the show cause notice in a time bound manner, and as the meeting of the Academic Council was not scheduled in near future, the Vice Chancellor in exercise of the powers under Section 12(7) of the 2016 Act, directed cancellation of affiliation and ordered shifting/transfer of the students to two institutions, namely, Everest College of Engineering and Technology, Jatwada, Aurangabad and International Center of excellence in Engineering and Management College, Waluj Dist. Aurangabad.

13. Feeling aggrieved, the petitioner is before this Court.

14. In this case, ten students of the college, taking education in the petitioner Institution had filed Civil Application No. 553 of 2022 for intervention, seeking a direction to the respondent University to permit them to pursue their Engineering Courses with the petitioner college and accept their examination forms and permit them to appear in the examination. In short, these ten students being the applicants claimed that they cannot be shifted to other institutions on account of the impugned action of the University.

15. This Court, by order dated 28.1.2022 had refused to grant any orders at that stage, as it was found that the interest of the students was adequately taken care of. The order dated 28.1.2022 was carried to the Supreme Court by the petitioner institution in Special

Leave to Appeal No. 2489 of 2022. The Supreme Court, by order dated 25.2.2022 has declined to interfere in the said order. However, the Supreme Court has expedited the hearing of the present petition. It is in these circumstances that the petition is taken up for final hearing.

16. We have heard the learned counsel for the parties. With the assistance of the learned counsel for the parties, we have gone through the record.

17. It is submitted by learned counsel for the petitioner that the infrastructural facilities are available with the petitioner as per the AICTE norms to run the Engineering Courses and any deficiencies, if any, pointed out can be cured and the petitioner undertakes to cure the same. It is contended that the reply filed by the petitioner to the show cause notice is not considered by the respondent University and the impugned order came to be passed in haste. It is submitted that the petitioner has made huge investment to establish the Engineering College and the necessary infrastructure and other facilities and the AICTE has granted Extension of Approval (EOA) as well as affiliation by the University is in place from 2009. It is contended that all of a sudden, the infrastructural facilities could not be said to be wanting, particularly when the EVC from the AICTE as well as other Officials from the University have visited the petitioner institution and carried out inspection. It is submitted that the action is taken out of vengeance/grudge and cannot be sustained in the circumstances of the

case. It is submitted that in so far as uploading of the NOC of the University for the year 2021-22 on the portal of the DTE is concerned, it was out of a mistake inadvertently committed by one of the staff members for which action is proposed. It is submitted that in any case, that is not one of the grounds for which the impugned action is taken. Reliance is placed on behalf of the petitioner on the decision of the Supreme Court in *State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Prasarak Mandal, 2006 AIR SCW 2048; Rungta Engineering College, Bhilai and another Vs. Chhattisgarh Swami Vivekanand Technical University and another (2015) 11 SCC 291 and Jawaharlal Nehru Technological University Registrar vs. Sangam Laxmibai Vidyapeet and others (2019) SCC 729.*

It is submitted by the petitioner that the AICTE being formed under the All India Council for Technical Education Act, 1987 which is a Central Act would prevail over the Maharashtra Public Universities Act, which is a State Act.

18. It is submitted that the impugned order is passed by the Vice Chancellor in exercise of Section 12(7) of the 2016 Act when it is for the Academic Council to pass such an order. It is submitted that purported urgency did not clothe the Vice Chancellor to invoke powers under Section 12(7) of the Act.

19. On the contrary, it is submitted by the learned counsel for the respondent University that there was a complaint by one Mr. Sunil

Thakre dated 9.9.2019 pointing out various irregularities and want of infrastructural facilities with the petitioner. It is submitted a 3 member committee headed by Dean Dr. Bhalchandra Waikar was constituted. The committee visited the petitioner and gave its report on 5.11.2021 and as there were serious irregularities and shortcomings found on the infrastructural and other fronts. A show cause notice was issued and after considering the reply, the Vice Chancellor has passed the impugned order invoking powers under Section 12(7) of the Act of 2016, inasmuch as, the show cause notice was required to be decided in a time bound manner till 21.12.2021(as directed by this Court) before which the meeting of the Academic Council was not scheduled. The learned counsel submitted that subsequently, the matter has been placed before the Academic Council for which a copy of the minutes of the proceeding dated 15.3.2021 were produced across the bar claiming that action of the Vice Chancellor has been ratified by the Academic Council. It is submitted that the students out of their free volition have joined the other two institutions and their examinations are also under way.

20. On behalf of the University, it is submitted that there is a serious lapse on the part of the Institution in uploading a fake and fabricated NOC of the university on the website of DTE for which an FIR is registered at Police Station, Begampura, Aurangabad. The learned counsel has placed reliance on the decision of this Court in *Devibai Narayandas Chhabda Rural Education Society vs. Shivaji University*, 2013(2) *Mh.L.J.* 473, in order to submit that the

University is not precluded from looking into the infrastructural and other facilities available and to see whether the requirements of Section 108 of the 2016 Act for continuation of affiliation and the norms prescribed by the AICTE have been followed or not.

21. It is also submitted that the petitioner was found to have not complied with Section 97 of the 2016 Act by constitution of a College Development Committee.

22. The learned counsel for the AICTE has submitted that by an order dated 19.2.2022 the AICTE found itself constrained to continue its Extension of Approval (EOA) to the petitioner. However, the institution is being kept under “No Admission Category” until further notice.

23. Mr. Hon, learned Senior Counsel appearing for the students/intervenors submitted that the students cannot be shifted to other institutions without their consent and cannot be compelled to get admitted in other institutions when they had opted for the petitioner institution and paid fees etc. He, therefore, supported the learned counsel for the petitioner in his challenge to the impugned action by the University.

24. We have given our anxious consideration to the rival circumstance and submissions made.

25. It is not in dispute that the petitioner was granted

recognition/approval by the AICTE since the year 2009-10 and from time to time, the AICTE has granted Extension of Approval (EOA) to the petitioner institution. It is a matter of record that even after the impugned action by the University, the AICTE by virtue of the order dated 19.2.2022 at page 235 of the compilation, after noticing the report of the 3 member committee dated 5.11.2021, constituted by the respondent University, had placed the institution under “No admission category”. However, at the same time, the AICTE has continued the Extension of approval (EOA) . Para 9 of the order dated 19.2.2022, reads thus :-

“9. Consequently, in exercise of the powers vested as per clauses quoted in Sr. No. 02 of this order, this Council finds itself constrained to continue its Extension of Approval (EOA) to **Shri Sai Samajik Shikshan Santha’s Shri Sai Engineering College (1-34182281), Pardari Tanda, Dist. Aurangabad** for all the courses and hence the said Institution is being kept under “No. Admission’ until further notice.”

26. It is a matter of record that a complaint was made by Mr. Sunil Thakre alleging absence of infrastructural facilities and other irregularities in the petitioner institution on 9.9.2019. The University had formed a 3 member committee headed by Dean Dr. Bhalchandra Waikar. The committee visited the petitioner institute and made report dated 5.11.2021 pointing out certain deficiencies/irregularities and absence of certain infrastructural facilities in the petitioner institution after which a show cause notice was issued on 18.11.2021.

A perusal of the show cause notice shows that broadly, the allegations were that the petitioner Institute is not having necessary facilities as required by Section 108 of the 2016 Act and the norms laid down by the AICTE, namely, absence of a regular Principal/Professors and other teaching staff, absence of an up-to-date library, absence of a hostel for boys and girls, the salaries of the Professors and Teaching staff were not being made through a Nationalized bank and service books of employees were not available and lastly, absence of a College Development Committee as required by Section 97 of the 2016 Act.

Broadly speaking, these are the grounds on which the impugned action is taken.

27. The petitioner had filed reply and refuted the contentions about the absence of infrastructural and other facilities . However, at the same time, it was claimed that if any such irregularities are there, same would be rectified. It is thereafter that, as no action was taken in the matter, that the petitioner had approached this court and the show cause notice was directed to be decided by 21.12.2021, vide order dated 16.12.2021 in W.P. No. 13764 of 2021.

28. The Vice Chancellor finding that the show cause notice has to be decided in a time bound manner and the absence of any meeting of the Academic Council being scheduled in the near future, had, by exercising powers under Section 12(7) of the Act of 2016 has passed the impugned order of cancellation of affiliation which is stated

to be ratified by the Academic council.

29. Section 12(7) which is relevant for the purpose, reads thus :-

“12(7) If there are reasonable grounds for the Vice-Chancellor to believe that there is an emergency which requires immediate action to be taken, or if any action is required to be taken in the interest of the university, he shall take such action, as he thinks necessary, and shall at the earliest opportunity, report in writing the grounds for his belief that there was an emergency, and the action taken by him, to such authority or body as shall, in the ordinary course, have dealt with the matter. In the event of a difference arising between the Vice-Chancellor and the authority or body whether there was in fact an emergency, or on the action taken where such action does not affect any person in the service of the University, or on both, the matter shall be referred to the Chancellor whose decision shall be final:

Provided that, where any such action taken by the Vice-Chancellor affects any person in the service of the university, such person shall be entitled to prefer, within thirty days from the date on which he receives notice of such action, an appeal to the Management Council.

Explanation. - For purposes of this sub-section, action taken by the Vice-Chancellor shall not include disciplinary action taken against any employee of the university.”

30. The impugned action is taken under Section 108 of the 2016 Act which prescribes for continuation of affiliation and

recognition. In particular, the show cause notice refers to the requirement of section 108 (d) and (f) (कलम १०८ चे (घ) आणि (च)) which reads thus :-

“Section 108 (a)...

(b)...

(c)....

(d) that there shall be suitable and adequate physical facilities such as buildings, laboratories, libraries, books, equipment required for teaching and research, hostels, gymnasium, etc. as may be prescribed;

(f) that the strength and qualifications of teachers and non-teaching employees of the affiliated colleges and recognized institutions and the emoluments and the terms and conditions of service of the staff or affiliated colleges and recognized institutions shall be such as may be specified by the university and the State Government and which shall be sufficient to make due provision for courses of study, teaching or training or research, efficiently;”

31. It is necessary to note that the ground of uploading a fake NOC on the website of the DTE does not form part of the show cause notice or the impugned order. Thus that is not the ground either in the show cause notice or in the impugned order for cancellation of affiliation. We find that the affiliation by the University and extension of approval by the AICTE was operating and was in existence for a period of about 12 years during which their ought to be various inspections both, by the University and the AICTE of the

petitioner institution. We also find that the alleged irregularities and want of facilities in a given case can be cured, if opportunity is granted to the petitioner. Thus, in our considered view, it would be appropriate if the Academic Counsel of the University which in normal course is empowered to take decision in the matter of affiliation re-considers the reply filed by the petitioner and decide the show cause notice afresh. The Academic Council can also consider, whether the requirements are such which can be cured or complied with, if opportunity is granted to the petitioner.

32. The Supreme Court in the case of ***Sant Dnyaneshwar (supra)*** has *inter alia* held that , after coming into operation of the Central Act, (in that case, the National Council for Teachers Education, Act) the operation of the University Act would be deemed to have become unenforceable in case of Technical colleges. It was observed that the provisions of the University Act regarding affiliation by the University would remain operative but conditions must be in conformity with the norms and guidelines prescribed by the Council. This is what is held in para. 52 of the judgment :-

“52. The same principle was applied to University Act and the Court held that after coming into operation of the Central Act, the operation of the University Act would be deemed to have become unenforceable in case of technical colleges. It was observed that the provisions of the University Acts regarding affiliation of technical colleges and the conditions for grant of continuation of such

affiliation by the University would remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation must be in conformity with the norms and guidelines prescribed by the Council.”

33. It is true that the judgment of the Supreme Court in *Sant Dnyaneshwar (supra)* has been considered by this Court in *Devibai Narayandas Chhabda Rural Education Society case (supra)*. That was a case where the AICTE had granted approval to the petitioner for two courses in Engineering on 10th May, 2012. The Government of Maharashtra in Higher and Technical Education Department, granted its permission for the academic year 2012-13 and consequential approval was granted by the Director of Technical Education (DTE). The approval granted by the Directorate specifically required affiliation to the Shivaji University. The University constituted a Local Inspection Committee for inspecting the college which submitted a report. The Deputy vice Chancellor of the University had specifically informed the Principal, that unless the affiliation was granted by the University, admissions should not be given and in the event, the college proceed to do so, such admissions would be regarded as contrary to the rules for which the College will be held responsible. In spite of this, the college proceeded to admit students for the academic year 2012-13. The University refused affiliation on the ground that (i) the college did not have a full time principal and duly qualified Librarian (ii) One of the teachers appointed for the Computer Science Course was not qualified as a postgraduate teacher and that the

college had merely identified two teachers (iii) The equipments necessary for the commencement of two postgraduate courses were not available with the college and (iv) There was absence of canteen facility.

This Court, after taking note of the various decisions holding the field, refused to intervene, in view of the fact that the college in gross violation of the directions of the University not to admit students unless affiliation is granted, had proceeded to do so. However, as a submission was made on behalf of the petitioner, that since after rejection of the affiliation, steps are taken to rectify the deficiencies to the extent relevant, this is what is held in para. 13 of the judgment :-

“13. The petitioners have now submitted that since the decision of the University to reject affiliation, they have taken steps to rectify the deficiencies. Whether this is factually true is something which the University would have to ascertain when it determines as to whether affiliation should be granted. It would not be either proper or appropriate for this Court to pre-empt such a decision being taken by the University, by the Court taking over that function of making an expert assessment. Such expert assessments in academic matters have to be left to the competent statutory authorities constituted under legislation.”

34. It can thus be seen that even in Devibai's case this Court found that all the existing deficiencies and any rectification thereof, is a matter of expert assessment and such expert assessment in academic

matters has to be left to the competent authorities constituted under the legislation.

35. We, therefore, find that it is ultimately for the University to consider the show cause notice and the reply filed by the petitioner and to require compliance with the deficiencies, if any, and then pass appropriate order.

36. However, in so far as challenge to the transfer of students in the two institutions is concerned, we are not inclined to interfere with the same at this stage, inasmuch as, practical examinations of these students was conducted from 23.6.2022 to 5.7.2022 and the theory examinations have started from 12.7.2022 and will conclude by 25.7.2022.

37. In the result, the petition is partly allowed. The impugned order dated 21.12.2022 to the extent of cancellation of affiliation granted to the petitioner is hereby set aside. The respondent – University shall decide the issue of cancellation of affiliation/show cause notice dated 18.11.2021 afresh in accordance with law and in the context of the reply submitted by the petitioner. The University shall also consider, whether the short-comings on the infrastructural and other aspects which have been noticed by the University can be cured/rectified and if so, whether opportunity needs to be granted to the petitioner for rectification of such short-comings. It will be open for the respondent – University to require the petitioner to furnish any

further information and to grant opportunity to the petitioner or its authorized representative. The respondent University shall take a decision in the matter within a period of two months from today.

Rule is made partly absolute in aforesaid terms with no orders as to costs.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.

grt/-