

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

Writ Petition No. 7474 / 2023

Marathwada Shikshan Prasarak Mandal's
Jayprakash Narayan B.Ed. College,
Devgiri College Campus, Aurangabad
Through Principal

...Petitioner

Versus

1. The Registrar,
Dr. Babasaheb Ambedkar Marathwada University,
Aurangabad.
2. Commissioner & Competent Authority,
State Common Entrance Test Cell,
8th Floor, New Excelsior Building,
A.K. Nayak Marg, Fort,
Mumbai.

...Respondents

WITH

Writ Petition No. 10510 / 2023

Jaimalhar Sevabhavi Sanstha's
Keshavraaj B.Ed. College, Sonegaon,
Tq. Patoda, District Beed.
Through Principal.

...Petitioner

Versus

1. The Registrar,
Dr. Babasaheb Ambedkar Marathwada University,
Aurangabad.
2. Commissioner & Competent Authority,
State Common Entrance Test Cell,
8th Floor, New Excelsior Building,
A.K. Nayak Marg, Fort,
Mumbai.

...Respondents

Mr. N.B. Khandare, Advocate for the petitioner in both petitions.

Mr. S.S. Tope, Advocate for Respondent No.1 in Writ Petition No.7474/2023.

Mr. Sachin Kupetkar, Advocate for Respondent No.2 in Writ Petition
No.7474/2023.

Mr. S.S. Thombre, Advocate for the Respondent No.1 in Writ Petition
No.10510/2023.

Mr. M.D. Narwadkar, Advocate for Respondent No.2 in Writ Petition
No.10510/2023.

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

RESERVED ON : 15 SEPTEMBER 2023.

PRONOUNCED ON : 21 SEPTEMBER 2023.

JUDGMENT [SHAILESH P. BRAHME, J.] :

. Rule. Rule is made returnable forthwith. Heard learned Counsel for the respective parties for final disposal.

2. Both the petitioners are challenging action of the respondent /University refusing to issue no objection certificate for want of appointment of regular Principal and the faculties. As a consequence of the rejection, the petitioners are unable to participate in the Centralized Admission Process in the academic year 2023-24.

3. The facts of both the petitions are identical. For the sake of brevity, we are referring to the facts in Writ Petition No.7474/2023.

4. The petitioner is an Educational Institution which runs teacher's education under graduate training College, imparting B.Ed. In another Writ Petition, petitioner is the College itself. Both the colleges are unaided. The colleges are recognized by the National Council for Teacher Education ('NCTE' for short) with permitted intake of 50 students for each division. They have two divisions and duration of the course was initially for two years

but after revised schedule it is of one year. The Colleges in question received permissions from Higher and Technical Department of the State of Maharashtra and affiliation from the respondent/University. The affiliation is continued and it is still in-force.

5. The colleges in question have to seek no objection certificate (NoC) from the respondent/University to enable them to participate in a Centralized Admission Process. The colleges were granted such NOC till last academic year i.e. 2022-23. Accordingly, the students were admitted. To enable the colleges to participate in the admission process for 2023-24, the petitioners submitted proposals on 04.05.2023 to the University by completing the formalities. On 12.05.2023, the University rejected the proposals indicating the ground that the respective colleges do not have approved and regularly appointed Principal and the faculties as per the Norms of NCTE. This action of the University is questioned in the present matters. Further directions are also solicited for issuance of NOC or to permit the petitioners to participate in the Centralized Admission Process.

6. It is the case of the petitioners that they are governed by NCTE under the National Council for Teacher Education Act, 1993 (hereinafter referred to as 'NCTE Act'). The petitioners have appointed Principal and the teaching staff as per the requirements. The teaching staff has been approved by the University. The teachers are even entrusted the duties of the examiner-ship from time to time. The University has continued affiliation. Due to refusal of NOC, the fundamental right of the petitioners under Article 19(1)(g) is violated. The petitioners have made endeavour to appoint regular teachers. By application dated 21.06.2023, a permission is also sought to recruit the

post of Principal, Teachers and a Librarian. There is no other infirmity in running the colleges, therefore action is patently illegal and arbitrary. The impugned action is without jurisdiction because the provisions of the Maharashtra Public Universities Act, 2016 (hereinafter referred to as Universities Act for the sake of convenience) are not applicable.

7. The respondent no.1/University has filed affidavit-in-reply in both the petitions. It has contested the claim of the petitioners. The staffing pattern of B.Ed. Colleges is regulated by UGC Regulation of 2018. The strength should be one Principal and 15 faculties regularly appointed and approved by the University under the Universities Act. Provisions are made to monitor the infrastructure, the strength and qualification of the teaching and non-teaching staff of the affiliated colleges. Statute, ordinance and the regulations issued by the University are applicable to the petitioners. The University is empowered to supervise imparting of education for maintaining the standard and has power to continue or discontinue the affiliation.

8. It is stated by the University that for the colleges, requisite strength is one Principal and 15 faculties considering intake of 100 students comprising of two divisions. The colleges never appointed the Principal or the teachers on permanent basis by following due procedure of law. The appointment of the teaching staff is not on regular basis. Those are appointed on temporary basis and approved temporarily. Those appointments are by local selection Committee. From time to time, the petitioners' colleges were apprised of the situation and were directed to appoint permanent staff on regular basis but no attempts are made. Therefore University is constrained to refuse NOC.

9. The learned Counsel for the petitioners submits that the refusal to grant NOC is violative of Article 19(1)(g) of the Constitution of India. The action is unreasonable and arbitrary because the colleges are being run since 2007 with requisite affiliations. It is not that the colleges do not have the Principal or the staff. There are Principals and the faculties appointed on the recommendation of the local selection Committee and they have been granted approval from time to time. It is urged that the impugned action leads to closure of the colleges and almost withdrawal of the affiliations.

10. The learned Counsel would submit that the petitioners' apex body is NCTE. They are regulated by the NCTE Act. As per UGC regulation of 2018, the University can have no role to monitor the strength of the staff because the petitioners are being run on non-grant basis. The petitioners are not required to secure any NOC from the University. The provisions of Sections 105, 108 of the Universities Act are not applicable. Our attention is invited to the approval granted by the University from time to time. Reliance is placed upon the application submitted by the petitioners, seeking permission for recruiting the teaching staff and issuance of advertisement to that effect which is at Exhibit-J. It is submitted that every attempt is made by the petitioners to recruit regular staff.

11. The learned Advocate for the petitioners would submit that the impugned action of the University is discriminatory. Such type of action is taken against the petitioners only. The petitioners have assured the University to recruit the staff as per the requirements.

12. By way of rejoinder, the petitioners have placed reliance upon the judgment of the Supreme Court in the matter of **Maa Vaishno Devi Mahila**

Mahavidyalaya Vs. State of U.P., reported in (2013) 2 SCC 617. It is reiterated that the concept of NOC has no sanctity of law. Presently the college run in the first petition has one In-charge Principal and six faculties having adequate experience. For that a tabular information is supplied by Exhibit-K. It is pointed out that by letter dated 30.06.2023, the University has given continuation of the affiliation for the academic year 2023-24. Few examples are also cited in the rejoinder to make out a case of discrimination.

13. Per-contra, the learned Counsel for the respondent/University would submit that the University has every power under Section 108 of the Universities Act to monitor the colleges and to see the academic standards are not lowered. The petitioners have persistently committed defaults by ignoring the instructions to appoint regular qualified staff. The conditions of affiliation would require the petitioners to comply the norms of staffing pattern. Since 2007, the petitioners have not appointed Principal or the faculties recommended by duly constituted selection Committee by adopting regular process of recruitment. It is submitted that the impugned action is aimed at maintaining a discipline in the field of education and to ensure prescribed standard of education. Reliance is placed on the judgment of the High Court rendered in the matter of **Nirmal Krida and Samaj Prabhodhan and Another Vs. The State of Maharashtra and Others** in Writ Petition No.8281/2022 and in the matter of **Nisargadeep Shikshan Prasarak Mandal, Aurangabad Vs. State of Maharashtra and Others** in Writ Petition No.9809/2022.

14. We have considered rival submissions canvassed by the learned Counsel for both the sides. We have considered the provisions of NCTE Act and Universities Act.

15. The petitioners' colleges are recognized by the NCTE from the academic year **2007/2008**. They are on permanent non-grant basis. The learned Counsel for the petitioners has invited our attention to Section 14 of the NCTE Act. According to him, NCTE is the apex body which prevails over the Universities Act. Our attention is invited to University Grant Commission (Minimum Qualification for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, **2018**. Regulation Clause 1.1 provides for the applicability of norms or standards laid down by the authority established by the relevant Act of Parliament for the purpose of direct recruitment to the adopting post in discipline of teacher education. It is the contention of the petitioners that therefore University has no role to play in the matters of recruitment of the teaching staff especially when college is unaided. It is brought to our notice by the learned Counsel for the University that Section 14 Sub-section 6 empowers examining body to grant/ to cancel the affiliation to the institution where recognition has been granted. Section 14 Sub-section 6 of the NCTE Act, is as follows :

Section 14 : Recognition of Institutions offering course of training in teacher Education :

1....

2....

3....

4....

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6.... Every examining body shall, on receipt of the order under Sub-section (4) -

(a) grant affiliation to the institution, where recognition has been granted; or

(b) cancel the affiliation of the institution, where recognition has been refused.

16. The same act defines examining body under Section 2(d) which means an University. We are shown the provisions of Sections **108, 110, 114 and 115**

to buttress that the University has power to grant affiliation and to see that condition of affiliation are complied with punctually.

17. The University is examining body and has power to grant affiliation to the college recognized by NCTE as per Section 14(6) of the NCTE Act. Notwithstanding the status of the college (aided or un-aided), University is empowered to grant affiliation. When it comes to affiliation provision under Sections 108, 110, 114 and 115 of the Universities Act are applicable. Following are the relevant provisions of Section 108 (1)(a)(f)(h) :

Section 108 :

(1) The management applying for affiliation or recognition, and the management whose college or institution has been granted affiliation or recognition, shall give the following undertaking and shall comply with the following conditions,

(a) that the provisions of the Act and Statutes, Ordinances and Regulations made thereunder and the standing orders and directions of the university and State Government shall be complied with,

(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 of 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;

(h) that the directions and orders issued by the Chancellor, Vice-Chancellor and other officers of the university in exercise of the powers conferred on them under the provisions of this Act, Statutes, Ordinances and Regulations shall be mandatorily complied with;

18. Section 110 provides for procedure for affiliation. Section 114 is for continuation of affiliation and Section 115 is for the extension for the affiliation. It is pointed out that the affiliation was granted to the petitioners on certain conditions, by order dated 05.03.2007. The condition no.4 is as follows :

(f) Further, the recognition is subject to fulfillment of all such other requirements as may be prescribed by other regulatory bodies like UGC and State Government etc.

(g) The institutions shall submit to the Regional Committee as Self Appraisal Report at the end of each academic year along with a copy of the approval of the affiliating University/State Directorate of Education about the appointment of faculty members and the Statement of Annual Accounts duly audited by a Chartered Accountant.

19. The affiliation of the petitioners' colleges was continued from time to time on certain conditions. The petitioners are bound to comply the conditions. The University is obliged to see the compliance of the conditions. In view of these reciprocals obligations, it can be inferred that the University has a power to grant or refuse NOC. It is the statutory duty in order to supervise the affiliated colleges which are run in consonance with the staffing pattern and maintain requisite standard of education. We, therefore, do not accept the submissions of the learned Counsel for the petitioners that the University does not have any power to grant NOC or NOC has no sanctity in law.

20. The University has taken a plea that the staffing pattern is provided by the National Council for Teacher Education (Recognition Norms and Procedure) Regulation 2014. Clause 5.1 stipulates number of teaching faculties. For the petitioners, considering the strength of the students, the

requisite number is one Principal and 15 faculties. The petitioners are bound to employ 16 members of the teaching staff as per Regulation of 2014 of NCTE. This position has not been controverted by the petitioners. Considering the intake capacity of 100 students of the petitioners, we have not been shown by the petitioners that 16 teachers including the Principal were ever recruited by them. Consistently there has been inadequate staff. Record produced by the petitioners shows the appointments and the approval for various years but those were not as per the requirement. Even the data supplied by the rejoinder which is at Exhibit-K discloses that presently there is one In-charge Principal and six faculties. The deficit in the teaching staff seems to be persistent.

21. The respondent/University has shown from the record that the conditions of affiliation are mandatory. The university is empowered to monitor the strength of staff. The petitioners have to employ requisite number of teaching staff. The revised order of recognition dated 21.05.2015 issued by the Regional Director of NCTE reiterated as follows :

5. Further, the recognition is subject to fulfillment of other requirements as may be prescribed by other regulatory bodies like UGC, affiliating University/Body, the State Government etc., as applicable. The affiliating body (University/State Govt.) shall also be required to verify the authenticity of the land & building documents as well as appointment of requisite teaching & non-teaching staff as per provisions of the NCTE Regulations, 2014 by the concerned institution before grant of affiliation to an institution.

22. The respondent/University issued a letter dated 15.07.2019 to the petitioners, instructing them to recruit 15 posts and permission was also granted for the advertisement. The ordinance dated 05.07.2011 also shows

the composition of the selection committee of the University. Further reliance is placed on the circular dated 18.06.2021 instructing various colleges to recruit regular Principals. The petitioners assured it though belatedly on 05.06.2023 that the appointments would be made. The above documents demonstrate that the petitioners were aware of the requirement of the teaching staff. From time to time they were apprised of removing the deficiency. After extending sufficient opportunities, the University has taken a drastic step of refusing NOC. We do not find any unreasonableness, impropriety or arbitrariness in the impugned action.

23. The learned Counsel for the petitioners emphatically argued that there is a Principal and the teaching staff which are having approvals and therefore the objection of the University is misplaced. The useful reference needs to be made to Section 2(44) and Section 2(61) of the Universities Act, which are as follows:

Section 2 (44) & Section 2(61) :

2. In this Act, unless the context otherwise requires _____

(44) "Principal" means a teacher who is duly approved as a Principal by the university;

(61) "teacher" means full-time approved professor, associate professor, assistant professor, reader, lecturer, librarian, principal, Director of an institution, Director of Knowledge Resource Centre, Director of Centre 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;

24. A teacher means full time approved Professor or Lecturer or Principal. The ordinance of 05.07.2011 issued by the University has made provision for composition of the selection committee of the University. The University has issued the ordinance/norms for the appointment of the staff. The relevant provisions are Sections 104, 105. Section 105(10) contemplates selection committee to undertake the selection process and provides for the mode of appointment of the teaching staff in an affiliated college. It should be as per the norms of University grant commission or the State Government. The petitioners are unable to point out that the teaching staff was appointed on a regular basis after following due procedure of law.

25. Appointment on a regular basis contemplated under the Universities Act is the recommendation and the selection by the duly constituted selection committee of the University. These features are absolutely missing in the present matters. There was never an advertisement followed by the recommendation of the duly constituted selection committee of the University, followed by the appointment and the approval. The petitioners are under obligation from their first affiliation to recruit 16 faculties inclusive of Principal by this method. They ran colleges without complying the condition and removing vital deficiency. This state of affairs continued from 2007-08 to 2022-23. We are not inclined to exercise our discretionary power for the defaulting petitioners.

26. The petitioners have made appointments but they were recommended by local selection committee. They are temporary in nature. They are approved for temporary period. This cannot be the compliance of condition of affiliation. Similarly this cannot be the compliance of mandatory requisite

staffing pattern fixed by the Regulation of 2018 of UGC. The University is justified in refusing NOC. No case is made out by the petitioners, why the requisite staff cannot be recruited from 2007-08 to 2022-23. We do not countenance the submissions of the learned Counsel for the petitioners that despite the recruitment of Principal and the faculties, the impugned action is taken which is contrary to law and is arbitrary.

27. The learned Counsel for the petitioners has referred to judgment of Maa Vaishno Devi Mahila Mahavidyalaya (supra). Paragraph Nos. 29, 40 to 43 are pointed out to show that the petitioners are governed by the norms, guidelines and standard laid down by the NCTE and NCTE is the specialized body in the subject. There is no quarrel about the proposition laid down in above paragraphs. In the present matters, the controversy is not regarding pre-dominance of NCTE.

28. The learned Counsel for the University relies upon the paragraph nos. 58 and 72 of the judgment in the matter of Maa Vaishno Devi Mahila Mahavidyalaya (supra), which are as follows:

58. The examining body can impose conditions in relation to its own requirements.

These aspects are (a) eligibility of students for admission;

(b) conduct of examinations;

(c) the manner in which the prescribed courses should be completed; and

(d) to see that the conditions imposed by the NCTE are complied with. Despite the fact that recognition itself covers the larger precepts of affiliation, still the affiliating body is not to grant affiliation automatically but must exercise its discretion fairly and transparently while ensuring that conditions of the law of the university and the functions of the affiliating body should be complementary to the recognition of NCTE

and ought not to be in derogation thereto.

72. Coming to the cases where the plea has been taken by the respondents University/State that conditions of affiliation have not been satisfied. It is not for this Court to examine the compliance or breach of conditions and their extent in the special leave petitions or writ petitions as the case may be. In fact, the judgment of the High Court has been brought to our notice where it has been recorded that conditions in some cases have been complied with, but still the State has taken the stand that besides cut-off date, other conditions are also not satisfied. One of the examples relates to the matter where the State/affiliating body has found that even the building's boundary wall was not complete and the fire equipments have not been installed as prescribed. However, these were specifically disputed by the petitioners/appellants who contended that all conditions had been satisfied. Thus, these are disputes of very serious nature. They will squarely fall beyond the ambit of appellate or writ jurisdiction by this Court. This is for the specialised bodies to examine the matters upon physical verification and to proceed with the application of the institute in accordance with law.

. We are fortified in our reasoning.

29. The learned Counsel for the respondent/University has referred to paragraph no.13 of the judgment in the matter of Nirmal Krida and Samaj Prabhodhan (supra), which is as follows:

“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.”

. We respectively concur with the principles laid down as above. We are therefore, reluctant to interfere with the impugned action of the University.

30. The learned counsel for the petitioner, alternatively, submits that presently there is strength of 07 members of the teaching staff in the college. This strength is adequate for intake of 50 students per division. The petitioner is having permissible intake of 100 students comprising of two divisions. He therefore, seeks partial permission to admit 50% of total intake. We have already recorded elaborate findings that the Principal and the faculties employed by the petitioners are not by way of regular mode of recruitment. They are ad-hoc. The principal is also in-charge principal. This type of recruitment of the staff is not contemplated. We are therefore unable to accept the submission of the learned counsel.

31. Before parting with the judgment, we have noticed some startling facts which we cannot desist from commenting about the petitioners' colleges were given recognition and the affiliation from 2007-08. Since beginning the petitioners' colleges are not having requisite number of faculties including the Principal as contemplated by the norms concerned. The respondent/University was aware of this situation. Meantime, the approvals appeared to have been given to few appointments on a temporary basis. The University did not initiate any action since 2007-08 till the impugned action of 2023-24. We find that the University entertained the lackadaisical approach of the petitioners' colleges. Had the prompt action been taken against the petitioners, the compromise with educational standard would not have been perpetuated for 15 years. The colleges would have improved earlier or they could have been permanently eliminated from the processes of

admission and yearly affiliations. We find that the authorities of the University have committed dereliction of the duties. The students are the ultimate sufferers because they don't get requisite number of qualified staff.

32. The University and its authorities are entrusted with very responsible obligations of supervision and control over the affiliated colleges which must be performed meticulously and timely. The strict action of the University can have the deterrent effect not only on the concerned colleges but also on other affiliated colleges. Now a days students and parents have multiple choices for selecting colleges at least in urban area. The college like petitioners are not the only, to cater the needs of education. We hope and expect that the respondent/University shall be careful henceforth and would discharge its statutory obligations efficiently.

33. For the reasons stated above, we hold that both the petitions have no merit and we dismiss those.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]