



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO.56 OF 2022
IN
WRIT PETITION NO.9652 OF 2017

1. The State of Maharashtra
through the Secretary,
Higher and Technical Education Department,
Mantralaya, Mumbai-32
2. The Desk Officer,
Higher and Technical Education Department
Mantralaya, Mumbai-32
3. The Director,
Higher & Technical Education,
Maharashtra State, Pune.
4. The Joint Director of Higher Education,
Nanded Division, Nanded

... PETITIONERS

VERSUS

1. Maharashtra Education Society,
Udgir, District Latur,
through its Secretary,
Ajay Dandwatte
2. Sadanand S/o Vishwambharrao Awale
3. The Dean/Registrar
Swami Ramanand Tirth University,
Nanded.

... RESPONDENTS

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Advocate for Applicants : Mr. R.N. Dhorde, Senior advocate (spl. counsel)

i/b. Mr. V.M. Jaware – AGP for applicant State

Advocate for respondent Nos.1 and 2 : Mr. N.P. Patil – Jamalpurkar

Advocate for respondent No.3 : Mr. Vijay P. Latange

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

Reserved on : 14.08.2024

Pronounced on : 23.08.2024

ORDER (MANGESH S. PATIL, J.) :

We have heard Mr. R.N. Dhorde, learned Senior advocate
and special counsel engaged by the State, Mr. N.P. Patil Jamalpurkar for

the respondent Nos.1 and 2 and Mr. Latange for the respondent No.3.

2. The review petition has been filed by the original respondent Nos.1 to 4 who are the Secretary of Higher and Technical Education Department of the State of Maharashtra, a Desk Officer from that Department, the Director of Higher and Technical Education Maharashtra State, Pune and the Joint Director of Higher Education, Nanded Division. The respondent Nos.1 and 2 are the Educational Institution and its employee who are the petitioners in the writ petition. Respondent No.3 is the Dean of the University to which the respondent No.1's College is affiliated.

3. The sum and substance of the petition filed by respondent Nos.1 and 2 was to the effect that it is an institution which was granted recognition by the State Government for running a science faculty college in the year 1966 under the Marathwada University Act, 1974 (Act of 1974). The Government was not providing any grant-in-aid for the faculty engaged for teaching computer science subject. By the Government Resolution dated 04.04.2012 the Government decided to make available grant-in-aid to that faculty which had been granted recognition prior to 2001. Respondent Nos.1 and 2 averred that respondent No.1 was granted recognition to start science faculty college in the year 1966. It was also granted affiliation by respondent No.3 – University for including computer science subject since the year 1994-1995 although the course commenced in the year 1998-1999. Since then

computer science is a subject being taught in the college of respondent No.1 which falls under the science faculty.

4. The respondent Nos.1 and 2 alleged that six similarly placed institutes were granted grant-in-aid but respondent No.1 was discriminated against by the impugned communication/order dated 30.11.2021.

5. The petitioners herein contested the petition by filing affidavits-in-reply and though admitted that respondent No.3 – University had granted affiliation to the computer subject being taught at respondent No.1's – Institute, it was done without prior permission of the State as contemplated under Section 43 of the Act of 1974 corresponding to Section 81 of the Maharashtra Universities Act, 1994 (Act of 1994) and corresponding to Section 109 of the Maharashtra Public Universities Act, 2016 (Act of 2016). It was precisely contended that though there was affiliation granted by respondent No.3 – University, it was erroneous. There was no permission of the State Government to start such a subject.

6. The petitioners had also specifically denied that there was any parity between respondent No.1 and the other six institutes from the same order dated 30.11.2021 who were granted grant-in-aid but it was refused to respondent No.1. It was the petitioners' stand therein that all these six other institutes since inception were granted permission to start science faculty college expressly covering the subject of computer science. Whereas, respondent No.1 was already granted permission in the year

1966 for starting science college under the law prevailing at that time when there was no computer science subject anywhere. It was subsequently included by respondent No.1 in the year 1998-99 without there being any permission by the State under Section 81 of the Act of 1994.

7. By the order under review a coordinate division bench allowed the petition *inter alia* holding that respondent No.1 was similarly placed as that of the other six institutes but was being discriminated against by refusing grant-in-aid for computer science subject. It quashed and set aside the order and directed the petitioners to release the grant-in-aid as per the Government Resolution dated 04.04.2012.

8. Mr. Dhorde would take us through the papers and would strenuously endeavour to demonstrate as to how the Court had erred in treating respondent No.1 as similarly placed with the six other institutes. He would advert our attention to the impugned order and particularly the individual orders passed by the State Government under Section 82(5) of the Act of 1994 granting permission to the other six institutes since the year 1996-1997 onwards and thereby further directing the University to take appropriate steps for granting affiliation. He would precisely point out that all these permissions for starting science colleges were granted with a specific reference to the subject of Computer Science to be taught in the science stream. He would, therefore, submit that unlike these other six institutes, the petitioner initially when it was granted

recognition under Section 43 of the Act of 1974 way back in the year 1965-1966 for starting the science faculty, the subject of computer science was not a part of the science faculty. It was a new subject started subsequently. Earlier respondent No.1 – Institute, when it was granted recognition was falling under the Marathwada University and was governed by the Act of 1974. After establishment of respondent No.3 – University, respondent No.1 started being governed and regulated by it. In the meantime, the Act of 1994 also came into being. In the absence of any permission/recognition especially for starting computer science subject, even if respondent No.3 had erroneously granted affiliation, it was an error. All these facts could not be brought to the notice of this Court which passed the order under review. It is an error apparent on the face of the record. There could not have been any affiliation without permission/recognition and without there being any permission/recognition the petitioners are under no obligation to release grant-in-aid for computer science subject being taught at respondent No.1 – Institute. He would pray that the order under review be reconsidered. He would refer to and rely upon following decisions :

- i. **Narbada Prasad Vs. Chhaganlal & Anr.; AIR 1969 Supreme Court 395**
- ii. **State of Gujarat Vs. Shantilal Mangaldas; AIR 1969 Supreme Court 634**
- iii. **P. Bhooma Reddy Vs. State of Mysore and Anr.; AIR 1969 Supreme Court 655**
- iv. **Dr. Punjabrao Deshmukh Memorial Education Society, Nagpur Vs. Nagpur University and Ors.; AIR 1997 Bombay 375**

9. The learned advocate for respondent No.3 – University would merely submit that indeed there was an affiliation to the computer science subject being taught at respondent No.1 – Institute.

10. Mr. N.P. Patil Jamalpurkar would strongly oppose the review petition. He would submit that it is devoid of any ground permissible under Section 114 read with Order XLVII of the Code of Civil Procedure. There is no error apparent on the face of the record or any other sufficient cause. Since there could not be any affiliation in law without there being any prior permission/recognition under the relevant Act, since respondent No.3 – University, admittedly, had granted affiliation to the computer science subject being taught at respondent No.1 – Institute, there has been no error in the order under review since computer science subject is a part of the science faculty. Six other institutes were granted grant-in-aid but respondent No.1 was denied. The issue regarding absence of permission or recognition was expressly brought to the notice of the division bench which passed the order under review and still it held that there was a discrimination against respondent No.1.

11. Mr. N.P. Patil Jamalpurkar would then refer to some decisions to buttress his submission that since it is a matter of review under Section 114 read with Order XLVII of the Civil Procedure Code, this Court has inherent limitations in exercising the powers. It cannot substitute its views in place of the one expressed in the order under review. No minute scrutiny of the merits can be undertaken once again. The respondent

No.1 was entitled to bank upon the presumption that since affiliation is supposed to be preceded by permission/recognition once there was affiliation, no fault can be found with the order under review in proceeding on the premise that there was recognition/permission. He would refer to and rely upon the decision in the matter of **Shri Ram Sahu (dead) through Lrs. Vs. Vinod Kumar Rawat & Ors.; Civil Appeal No.3601/2020 (SLP (c) No.28150/2017)**.

12. We have considered the rival submissions and perused the papers.

13. One need not delve deep and it would suffice to proceed by bearing in mind the inherent limitations of the review jurisdiction. Apart from the parameters laid down in Section 114 and Order XLVII of the Code of Civil Procedure, there are catena of decisions which have culled down the law. A rescrutiny of the entire subject matter and the material can seldom be resorted to in exercise of such powers. The error should be apparent and is not of the kind which is required to be dug out by undertaking a thorough process of scanning the evidence/material. The Review Court cannot substitute its view when the order under review takes a plausible view and is apparently borne out from the material on the record.

14. Bearing in mind and without reproducing the paragraphs from the aforementioned judgments for the principles laid down therein, we have no manner of doubt that the division bench which passed the

order under review was clearly alive to the specific stand being taken by the petitioners herein. In the affidavits-in-reply filed on their behalf, it was expressly contended and brought to the notice of the division bench that different Acts which are in place from time to time contained a specific provision requiring permission/recognition of the State Government for starting any college or any course or subject. All these Acts also contain specific provision regarding grant of affiliation by the respective Universities only after the State Government had granted permission/recognition. It was also specifically contended that when respondent No.1 – Institute was granted permission/recognition for the first time in the year 1965-1966 the computer science subject was not available and it was introduced only subsequently. Attention of division bench was also brought to the notice that respondent No.1 - Institute had not produced any order granting permission/recognition and even respondent No.3 – University was unable to do it. Even a copy of the communication dated 18.10.1996 sent by the Principal of respondent No.1 – Institution addressed to the Deputy Director of Higher Education, Nanded Region expressly mentioning that the University had granted affiliation to the computer science stream but till the date there was no permission from the State Government and it had not actually started imparting education in that subject. The division bench was also alive to the fact that the six other institutes to whom grant-in-aid was made available were having general permission and general recognition for

starting a science faculty which included computer science subject. The division bench had proceeded on the premise that since respondent No.1 – Institute was having general permission/recognition for science faculty since the computer science subject is a part of it, there was a discrimination.

15. If such is the state of affairs, even if we are of the view that since permission/recognition of the State Government is *sine qua non* for any University to grant affiliation either under the Act of 1974 or under Section 81 and 82 of the Act of 1994 or Section 109 of the Act of 2016, we cannot substitute our view even when respondent No.1 had not produced on record any concrete evidence regarding grant of such permission/recognition. It is not a matter of any error apparent on the face of the record and we cannot substitute our views by undertaking rescrutiny of the entire matter and pass a fresh order. No ground contemplated under Section 114 read with Order XLVII is made out.

16. The Review Application is dismissed.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE