



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

WRIT PETITION NO.13373 OF 2024

Shri Datta Mahila Mahavidyalay & anr. ... **PETITIONER**

VERSUS

Yashwantrao Chavan Maharashtra
Open University & anr.

... **RESPONDENTS**

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Mr. Shambhuraje V. Deshmukh, Advocate for Petitioners
Mr. B.L. Sagar Killarikar, Advocate for Respondent No.1
Mr. Suresh Mundhe, Standing Counsel for R.No.2

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**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

Date of reserving order : 6th August, 2025

Date of pronouncing order : 6th October, 2025

ORDER (PER : R.G. AVACHAT, J.) :

Heard. This petition, under Article 226 of the
Constitution of India, has been filed for the following main
relief:

(B) By issuing writ of mandamus or any other appropriate writ,

order or directions in the like nature, the impugned communication dated 26/10/2024 issued by the respondent No.1 and the 3rd proviso to clause 4(B)(ii) to the extent of putting condition of “7 years” of offering same programme in conventional mode may kindly be quashed and set aside and the proposal of the petitioner for continuation of approval of open and distance education study center for B.Sc. Degree course may kindly be directed to be approved and confirmed.

2. The petitioners are the Colleges run by Shri Datta Shikshan Prasarak Mandal, Votala. The respondent No.1 is an Open University. It offers distance education programmes. The respondent No.2 is the University Grants Commission, a statutory body.

3. The respondent No.1 had, in 2020, granted the petitioners permission to run distance education centre for graduation in Science stream. It was a permission for a period of three years. Even for the year 2023-2024, the respondent No.1 in fact granted permission to run such distance education centre. It abruptly, by issuing the impugned communication, called upon the petitioners to discontinue the said education centre. It mainly relied on provisions of Section 4(B)(ii) of the University Grants Commission (Open and Distance Learning

Programmes and Online Programmes) Regulations, 2020 (for short the Regulations, 2020). The petitioners are, therefore, before us.

4. Learned Advocate for the petitioners would submit that, the proviso to a statutory provision does not have a scope beyond the main provision to which it is a proviso. He relied on certain principles of interpretation of statute in this regard. Our attention was also drawn to the first proviso to the very provision which suggests that the main provision has no application to the Open Universities. The learned Advocate meant to say that, the Open Universities have every right to run distance education centre for Science stream either on its own or through its affiliated higher educational institutions. He would further submit that, by abruptly discontinuing the centre, the students from the nearby vicinity have been deprived of their right to education. Such students were required to go to a long distance educational institutes. The provision providing 7 years standing in conducting such educational programme under conventional mode is, therefore, unreasonable and liable to be held unconstitutional. He, therefore, urged for

allowing the Writ Petition.

5. The learned Advocate for respondent No.1 would submit that, the petitioners have an alternative efficacious remedy. They be, therefore, directed to avail the same. On the merits of the matter, the learned Advocate would submit that, the learned Advocate for the petitioners has made self-inconsistent submissions.

6. While the vires of the provisions is challenged, the same indicates the petitioners to have admitted the provision to have application to the Open Universities. The petitioners, therefore, could not be heard to say the provision to have no application at all. On the ground of challenge to the validity of the provision, the students, at whose behest the provision is sought to be held unreasonable, are not before this Court. The educational institute cannot take a cause of students' fraternity in general. He, therefore, urged for dismissal of the Writ Petition.

7. We have considered the submissions advanced.

Perused the documents on record. Learned Advocate for the petitioners, as usual, was candid enough to submit that the Division Bench of this Court, in case of **Symbiosis Open Education Society and Symbiosis Skills and Professional University Through its Principal Director & anr. Vs. University Grants Commission & ors. (2024 SCC OnLine Bom 1954)**, has turned down the challenge to the very provision on the ground of its constitutional validity. He would further submits that, the Special Leave Petition preferred against the said decision was dismissed in limine.

8. Admittedly, the respondent No.1 Open University had granted the petitioners permission to run distance learning centre for Science stream. The petitioners even run the said centre for little over three years. The respondent No.1, however, relying on the provisions of Section 4(B) of the Regulations of 2020, recalled the provision. It would, therefore, be in the fitness of things to first refer to the relevant provisions of the Regulations, 2020.

1. Short title, application and commencement.—

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(2) These regulations lay down the minimum standards of instruction for the grant of degrees at the undergraduate and post graduate levels and grant of post graduate diploma, through Open and Distance Learning mode and Online mode and shall be in addition to and not in derogation of any other regulations, Notifications, Guidelines or Instructions issued by the Commission.

(3) These regulations shall apply to a University referred to under clause (f) of section 2 of the University Grants Commission Act, 1956 (3 of 1956), an Institution Deemed to be University under section 3 of the said Act:

Provided that the University Grants Commission may, by order, exempt a Higher Educational Institution or Higher Educational Institutions from the application of these regulations.

2. Definitions:- In these regulations, unless the context otherwise requires :-

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(f) Conventional model means a mode of providing learning opportunities through face to face interaction between the teacher and learner in regular class room environment but does not exclude supplementary instructions if any for the learner through use of online;

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(m) Higher Education means such education imparted by conventional mode or through open and distance learning mode or through online mode

conducting regular classes or through Open and Distance Learning mode or through Online mode, beyond twelve years of schooling leading to the award of a Degree at undergraduate or postgraduate level or Certificate or Diploma or Postgraduate Diploma; (n) —Higher Educational Institution^{||} means a university under clause (f) of section 2 and an Institution Deemed to be a University under section 3, of the University Grants Commission Act, 1956, which is offering programmes through conventional mode and/or through Open and Distance Learning mode and/or through Online mode, in the field of higher education or research therein;

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(w) Open University^{||} means a Higher Educational Institution which imparts education only through Open and Distance learning mode and/or Online mode using variety of media including print, electronic, online, information and communication technology educational aids including Open Educational Resources (OERs) or Massive Open Online Courses (MOOCs) etc. and is not having any provision for offering higher education in conventional mode in its Act or Memorandum of Association or other statutory documents governing the Higher Educational Institution;

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4. Requirements for Submission of Proposals.—

(B) Provisions for Open and Distance Learning Mode:

(i) The Higher Educational Institution shall adhere to the policy of territorial jurisdiction as specified in Annexure-III;

(ii) A Higher Educational Institution shall be

eligible to offer only those degree programmes at undergraduate and postgraduate levels and post graduate diploma programmes, which it has already been offering in conventional mode of classroom teaching and from which at least one batch has passed out: Provided that this sub-clause shall not be applicable to Open Universities: Provided further that Science based programmes, which require hands-on experience, experimental setup, shall be offered only by the Higher Educational Institutions having NAAC score of 3.26 and above or by the Open universities or by the Higher Educational Institutions having rank in top-100 in University category of National Institutional Ranking Framework (NIRF), at least twice in three preceding cycles: Provided also that the Science based programmes shall be offered from the Head Quarters and/or only from such Learner Support Centres which are offering same programme under conventional mode at least for seven years.

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9. True, the proviso indicates that sub-clause (ii) is not applicable to Open Universities. The said proviso is, however, an exception to the main provision (i) and (ii) above. The next proviso is so eloquent to state that Science based programmes shall be offered only by higher educational institutes NAAC 3.26 and above by Open Universities or by the higher educational institution. The provision, therefore, could not be read to observe that this provision of sub-clause (b) has no

application at all to the Open Universities. Moreover, when the petitioners challenged the constitutional validity of the said proviso, it impliedly admits the proviso to have application to Open Universities. The said proviso is alleged to be ultra vires on account of the students from the vicinity to have been deprived of the facility which was available to them on account of the respondent No.1 to have granted the petitioners permission to run distance educational centre for Science stream. Admittedly, none of the students are before this Court. The averments in the petition itself indicate that no sooner the order impugned herein was passed, the students affiliated to the petitioners have joined the other nearby educational institute. By no stretch of imagination, the proviso could, therefore, be held to be unreasonable. In our view, therefore, the challenge thereto fails. The Writ Petition, therefore, deserves to be dismissed. The same is dismissed.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

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