

(2024) 09 BOM CK 0019

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 3286 Of 2024 With Civil Application No. 5793 Of 2024

Ratnadeep Medical Foundation
And Research Centre Ratnapur
Through Its Secretary

APPELLANT

Vs

Collector And Others

RESPONDENT

Date of Decision: Sept. 27, 2024

Acts Referred:

- Constitution of India, 1950 - Article 226
- Indian Penal Code, 1860 - Section 354A
- Maharashtra Public Universities Act, 2016 - Section 108
- Universities Act, the Maharashtra Public Universities (Penalties to be imposed upon erring affiliated colleges/ recognized institutions) Uniform Statute, 2018 - Section 72(10), 120

Hon'ble Judges: Mangesh S. Patil, J; Shailesh P. Brahme, J

Bench: Division Bench

Advocate: V.R. Dhorde, S.P. Joshi, A.R. Joshi, M.V. Salunke, V.D. Salunke

Final Decision: Allowed

Judgement

Mangesh S. Patil, J

1. Heard. Rule. Rule is made returnable forthwith. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The facts leading to filing of the writ petition can be summarized as under :

(a) The petitioner-Trust has been running educational institutes since the year 2000. In the year 2010 it was accorded permission by the Maharashtra Nursing Council for

starting Auxiliary Nursing and Midwifery course (ANM). In the year 2011, General Nursing and Midwifery course (GNM) was also permitted to be started. In the year 2015 with the permission of the Maharashtra University of Health Sciences (MUHS) B.Sc. Nursing Course was started. Subsequently by the permission of MUHS even BHMS course was started in the year 2017.

(b) The petitioner was also permitted to start degree and diploma courses in pharmacy by respondent no. 5-Directorate of Technical Education and necessary permission and affiliation was granted by respondent no. 6-Savitribai Phule Pune University. It is in respect of these courses that the present issue pertains to.

(c) Subsequently, Dr. Babasaheb Ambedkar Technological University also granted permission and affiliation to the petitioner for starting degree and diploma courses in pharmacy in the year 2021-2022.

(d) It is alleged by the petitioner that due to political rivalry and at the instigation of political opponents, the students indulged in agitation when the institute demanded reimbursement of the fees, which some students had received in their respective accounts by way of scholarship. In the light of continued agitations and motivated by political reasons, respondent no. 6-University constituted a committee under the Chairmanship of Dr. Sandeep Palve, the then Deputy Registrar of the University and arrayed herein as a respondent no. 7. The premises of the college wherein diploma and degree courses under pharmacy were being run were sealed including the documents and laboratory on 08.03.2024.

(e) Since the last date for filling in the form for the examination was reaching and some students were unable to fill in the forms, some how the time was extended and these other students were allowed to fill in the forms through another college being run by the petitioner-Trust.

(f) By the first impugned communication dated 12.03.2024 (Exh. F), the petitioner and the Principal of the College were called upon to explain giving reference to the enquiry conducted by respondent no. 7 that prima facie it was revealed that the institute had committed breach of terms and conditions for grant of affiliation provided for in Section 108 of the Maharashtra Public Universities Act, 2016 (hereinafter 'the Universities Act'), calling upon to explain within eight days as to why consequential action should not be initiated against it.

(g) The petitioner-Trust replied to this notice by its communication dated 23.03.2024, making its stand clear, including as to how due to the agitation, the Tahsildar had sealed the entire premises and as to how in spite of repeated request Tahsildar Jamkhed was not desecrating the premises and as to how the Chairman of the Trust was falsely implicated in a crime under Section 354A of the Indian Penal Code.

(h) Independently, even respondent no. 1-District Collector, Ahmednagar, under his signature constituted a committee by order dated 13.03.2024, for undertaking a fact finding enquiry in respect of the allegations against the institute and its Chairman.

3. In the wake of above events, the petition was filed on 26.02.2024, initially challenging the action of sealing of the premises and the notice dated 12.03.2024 (Exh. F). A Writ of prohibition was also solicited preventing all the respondents in obstructing the petitioner-Trust in running the institute and for issuance of a direction to unseal the premises and to allow the petitioner-Trust to have an access.

4. By the order dated 27.03.2024, respondent no. 3-Tahsildar was directed to remove the seal and handover the keys to the petitioner under a panchnama. Simultaneously, the petitioner was also directed to submit its reply to the impugned notice dated 12.03.2024 (Exh. F)

5. In the meantime, respondent no. 6-University issued a general circular dated 24.05.2024, to all the colleges running pharmacy courses like the petitioner for submission of online applications or continuation of the affiliation for the academic year 2024-2025 (Exh. O). The petitioner, by its communication dated 25.05.2024, informed respondent no. 6-University its inability to fill in the proposal, as it was imperative to be accompanied by a self appraisal form but it was unable to do it due to sealing of the premises. It is the stand of the petitioner that though pursuant to the order of this Court the office premises were unsealed but the laboratory and record was not unsealed and it was unable to submit necessary application for extension of affiliation in time. It requested respondent no. 6-University to direct unsealing of the laboratory and the record. However, the respondent no. 6 did not respond.

6. It is the stand of the petitioner that though it was granted affiliation on year to year basis for the pharmacy courses by respondent no. 6-University since year 2018-2019 continuously, instead of extending cooperation in the peculiar circumstances, by a communication dated 09.07.2024, the University informed the petitioner that earlier affiliation had come to an end on 30.06.2024, and directing it not to admit students for the academic year 2024-2025. It also directed transfer of the students of the previous years studying in II, III and IV year, to other colleges. Immediately, on the very day that is on 07.09.2024, by moving a communication (Exh. S), the petitioner sought permission from respondent no. 6-University for admitting students to the first year by giving affiliation.

7. In the wake of such supervening events, the petitioner was permitted to carryout necessary amendment in putting up challenge to the letter dated 09.07.2024 (Exh. R) and to add a prayer clause seeking direction in the form of writ of mandamus to respondent no. 6-University to unseal the premises and to grant affiliation, by the order dated 22.07.2024.

8. In the meantime, respondent no. 6-University through its Deputy Registrar Academic Section (Affiliation Unit) filed affidavit in reply on behalf of respondent nos. 6 and 7 on 29.07.2024. It justified the action of issuance of notice dated 12.03.2024 (Exh. F) and the subsequent communication dated 09.07.2024 (Exh. R). It was stated that by resolution no. 120, the Management Council of the University had resolved to initiate appropriate action for imposition of penalty/punishment in the light of statute framed under Section 72(10) of the Universities Act, the Maharashtra Public Universities (Penalties to be imposed upon erring affiliated colleges/ recognized institutions) Uniform Statute, 2018 (hereinafter 'Statute of 2018'). It was also resolved that since there was breach of the terms and conditions subject to which affiliation was granted under Section 108 of the Universities Act, and a case was made out under clause 2(1) and 2(10) of the Statute of 2018 it recommended prohibition against the petitioner in admitting the students for the first year of 2024-2025 academic year.

9. Additional affidavit was also filed by the same Deputy Registrar on behalf of respondent no. 6 and 7 on 21.09.2024, justifying its action of issuing notice. It was stated as to how there was violation of terms and conditions subject to which the affiliation was granted.

10. In view of such supervening events and the stand of the respondent no. 6-University, the petitioner-Trust prayed for ad interim relief. By the order dated 06.09.2024, in the wake of resolution No. 120 passed by the Management Council (sic) the communication dated 09.07.2024 (Exh. R) to the extent of its second paragraph, directing transfer of the students of the previous years, was stalled. In the light of such sequence of events, it was also directed that the writ petition itself would be heard finally on 24.09.2024 but could be heard today.

11. We have heard the extensive arguments of the learned advocate of the petitioner, the learned A.G.P., the learned advocate for respondent nos. 6 and 7 and even the learned advocate Mr. Salunke for the students, who have filed Civil Application No. 5793/2024 seeking intervention. Even they were allowed to file an affidavit. Accordingly, their learned advocate tenders across the bar the affidavit filed for and on behalf of all the intervenors opposing the petition.

12. As can be gathered, except the allegations and counter allegations in respect of the alleged episode of molestation, for which the President of the petitioner-Trust was prosecuted and the stand of the institute and the students in respect of reimbursement of the tuition fees and operation of the institute, so far as the other events (supra) are concerned, there has been no dispute.

13. Admittedly, the petitioner-Trust has been running B. Pharmacy and D.Pharmacy courses with the recognition and affiliation granted by respondent no. 6-University since 2018-2019, on year to year basis.

14. Though there is reference to the breach of terms and conditions subject to which the affiliation was granted under Section 108 of the Universities Act, the first impugned notice (Exh. F) dated 12.03.2024, does not seek to undertake any process for cancellation of affiliation as is contemplated under Section 120 of the Universities Act. Neither the notice contains any such indication nor is there any such stand of the University in the three affidavits in reply.

15. Independently, as is contemplated under Section 120, the impugned notice (Exh. F) would not fit into the requirements of that provision which contemplates at least a 30 days notice to the institute, calling upon it to show cause as to why steps shall not be taken for de-recognition or de-affiliation. The notice (Exh. F) does not indicate and disclose intention of respondent no. 6-University to undertake any such process for de-affiliation or de-recognition. It also does not give time of 30 days, as is mandated by that provision. Besides, as laid down in Section 120 the action has to be initiated by the Board of Deans, whereas the impugned notice, apart from the fact that it does not indicate that it was being issued pursuant to any decision of the Board of Deans, is signed by the Deputy Registrar (Affiliation Section) of respondent no. 6-University. Therefore, it would not fit into the parameters laid down under Section 120 of the Universities Act, even if it is assumed that the circumstances were such that respondent no. 6-University was called upon to act pursuant to some agitation against the petitioner and its Chairman. The impugned notice dated 12.03.2024 (Exh. F) would not be sustainable on the touchstone of the requirements of Section 120 of the Universities Act.

16. Admittedly, respondent no. 6 University has, in the third affidavit in reply has disclosed the action of sealing of the premises and has tried to justify it by the second impugned communication dated 09.07.2024 (Exh. R), as an action in the purported exercise of the powers under Statute of 2018, in the light of resolution No. 120 of the Management Council.

17. A careful perusal of the Statute of 2018 reveals that it provides for imposition of penalty/punishment on the institutes concerned, in case of breach of terms and conditions subject to which affiliation is granted under Section 108. Clause 2 gives a list of alleged misconduct/ mismanagement/ lapses in the matter of examinations etc. Breach of terms and condition of affiliation under Section 108 is covered by sub clause 1. Sub clause 2 states about conduct of the institute having potential to damage reputation of the University and is affecting standard of the education. Sub clause 10 states the management committee has to prima facie reach a conclusion about breach of the terms and conditions of affiliation the institute and is liable for imposition of certain punishment. Clause 3 of the Statute of 2018 provides for the penalties to be imposed like censure, fine, prohibition, suspension of affiliation etc.

18. Clause 4 then contemplates and provides for a procedure to be followed and lays down that after receipt of a complaint when the Management Council prima facie arrives at conclusion that the institution has committed breach or has acted in the manner prescribed under clause 2, the Board of Deans shall issue a notice to the institute extending 15 days time for submitting the response to the Pro Vice Chancellor. Sub clause 2 of clause 4 then lays down that if the management admits the alleged misconduct or is unable to give any satisfactory explanation, the Board of Deans shall submit necessary proposal/report to the Management council for imposition of adequate penalty/punishment. Under sub clause 3 of clause 4 if the management does not admit the imputations, the Management Council has to appoint a committee for undertaking enquiry. Such committee, by extending adequate opportunity to the management as also the University is expected to submit its report within 30 days to the Management Council expressly recording its opinion in respect of each of the imputations.

19. Based on such a report, the Management Council can decide the penalty/punishment. Under sub clause 6 of clause 4, depending upon the decision of the Management Council, provides that the Board of Deans would issue a final show cause notice to the institute as to why the punishment/penalty determined by the Management Council shall not be imposed and extend 15 days time to submit the reply. The Board of Deans by considering the explanation if any, would impose the punishment/penalty.

20. Having borne in mind the modalities prescribed under Statute of 2018, the first impugned notice dated 12.03.2024, even did not disclose that the exercise as mentioned therein was being undertaken on the decision of the Management Council and was being processed through the Board of Deans.

21. Even the second impugned communication dated 09.07.2024, does not refer to the Statute of 2018 and ex facie directly imposes a sort of penalty/punishment contemplated under the Statute of 2018 and communicates the decision prohibiting the petitioner from admitting students for the first year for the academic year 2024-2025, and also directs decision of the governing council of the University for shifting of the students studying with the petitioner's institution in II, III and IV years of the respective courses. It does not refer to any enquiry having been conducted as is contemplated under the Statute of 2018, any decision of the Management Council or that of the Board of Deans much less speaks about any opportunity having been extended to the petitioner by either of these bodies and in the light of the provisions of the Statute of 2018, the action was being taken. Even the affidavits in reply are conspicuously silent about necessary compliance having been made by taking precaution to follow the modalities prescribed under the Statute of 2018.

22. Needless to state that it is trite, that when a statute expects and provides for a thing to be done in a particular manner, it has to be done strictly in the same manner or not at all. The circumstances are writ large to demonstrate that the entire process of imposition of penalty under the Statute of 2018, for the alleged breach of terms and conditions subject to which affiliation is granted under Section 108 of the Universities Act, have been given a complete go by. We, therefore, have not even slightest of hesitation in concluding that both the impugned notice/communication dated 12.03.2023 (Exh. F) and 09.07.2024 (Exh. R) are not sustainable in law and are liable to be quashed and set aside.

23. These conclusions of ours are not to be taken as if we have made any comment on the disputed facts as regards several allegations and imputations being levelled against the petitioner-Trust. We are merely demonstrating that the decision making process followed by respondent no. 6-University is faulty and is not sustainable in the eyes of law. It would always be open for it to follow appropriate procedure as is discussed herein above and take it to the logical end, strictly in accordance with law.

24. True it is, as is being submitted by the learned advocate for the intervenors-students, there could be several reasons for them being not happy to undertake further education in the petitioner institution. Some of them could have been, pursuant to the impugned action and communication, admitted in some other colleges. It would be for the respondent no. 4-Director of Technical Education and respondent no. 6-University to take appropriate decision in respect of these students. They are merely intervenors before us and it would always be open for them to agitate their own cause independently. We can only decide the petition on its merits and to the extent possible for this Court in exercise of the jurisdiction under Article 226 of the Constitution of India. That cannot prevent us from exercising the jurisdiction irrespective of the consequences, which would ensue and could have a bearing on the rights of the students.

25. So far as the remaining prayer of the petitioner-Trust regarding its inability to tender the requisite application seeking affiliation for the academic year 2024-2025, irrespective of the facts and circumstances regarding which there is no dispute, about sealing of its premises and the laboratory, record, as a cause for it not to submit the requisite application in time, even otherwise, the learned advocate for respondent no. 6-University, on instructions, submits that the time for grant of affiliation has been extended and if the petitioner makes necessary application, respondent no. 6-University would process it on its own merits and in accordance with law.

26. In the light of above, the writ petition is allowed.

27. The impugned communications dated 12.03.2024 (Exh. F) and 09.07.2024 (Exh. R) are quashed and set aside.

28. Respondent no. 6-University shall permit and process the application of the petitioner seeking affiliation for the academic year 2024-2025 on its own merits and in accordance with law, within two weeks.

29. Respondent no. 4-Director of Technical Education and respondent no. 6 University shall take appropriate decision in respect of the students, who have already been transferred to some other colleges in light of the impugned communication dated 09.07.2024, as expeditiously as possible.

30. Rule is made absolute in above terms.

31. Civil Application No. 5793/2024 is disposed of.