

2000(1) ALL MR 442

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

N.J. PANDYA AND R.J. KOCHAR, JJ.

**The Maharashtra Cosmopolitan Education Society &
Anr. Vs. The University Of Pune & Ors.****Writ Petition No. 4639 of 1999**

24th August, 1999

Petitioner Counsel: Mr. S.G. ANEY, SR. Advocate with Mr. S.V. PITRE, Ms. BHAVANA JADHAV, Mr. V.V. PAI**Respondent Counsel:** Dr. DHANANJAY Y. CHANDRACHUD with Mr. G.S. KULKARNI i/by Mrs. M.G. KULKARNI

Maharashtra Universities Act (1994), S.83 (3)(c) r/w S.82 (5) - Scope - Govt. Sanction - When necessary - Matters not having financial implications - University need not take Sanction of Government - However, in matters raising question of budgetary allocation - Govt. sanction necessary - Increase in seats in course - University need not seek Govt. approval for permitting the increase.

In all the matters for which powers are vested in the University and its different functionaries if there are no financial implications, it is open to the University and its functionaries to take appropriate decision on merits in each of the case. At the same time it is emphasised that in all the matters, though within the powers of the University and its functionaries, where there are financial implication or having effect on budgetary resources of the State Government, the University shall approach the State Government and take its approval or sanction as the case may be.

JUDGMENT

N.J.PANDYA, J. :- Rule, Advocates for the Respondents waive service, Returnable forthwith. Heard.

2. The admission to Bachelor of Computer Science (B.C.S.) or Master of Computer Science (M.C.S.) course being managed exclusively by the colleges is now taken over by centralised admission procedure. However, so far as petitioners before us are concerned they do not have any objection on this and on the contrary they accept the said procedure. This point therefore does not survive.

3. The fees structure of the said two courses is governed by the Ordinance which is dating prior to the appointment of Dr. Takawale Committee. Dr. Takawale Committee being appointed recently has taken into consideration the present position and the financial requirement for running the aforesaid courses in Computer Science and has recommended higher fees.

4. On behalf of the University Dr. D.Y. Chandrachud has instruction to state that the said report will be processed in its entirety and more particularly with reference to the fees structure as suggested. Once a decision is taken by the functionary under the Maharashtra Universities Act in this regard, it shall be communicated to the management of the respective education institutions. Looking to the urgency of

the matter, the University and its functionaries shall take the decision as early as possible, in no case later than 31. 10. 1999. In view of this statement made on behalf of the University, this controversy also would not survive.

5. There is question of number of students to be admitted in each of the courses. However, in this regard the University has already recommended increase in the seats and the matter is pending before the Government. Counsel for the University further says that if this Court holds that with regard to the increase of seats, the University can take its own decision and need not seek prior approval to do so. On this point, the parties will be heard and decision will be given.

6. The question of N.R.I. quota having been reduced from 10% to 5% also does not survive as the University has stated in its affidavit that the quota is 10% and is not reduced to 5% as apprehended.

7. We have heard the parties on the question of requirement of approval of the Government. Sections 81, 82 and 83 of the Maharashtra University Act were pointed out to us.

8. At the Bar it was pointed out that Section 81 requires the applicant - institution seeking affiliation or recognition to mention the number of students admitted to courses of studying and Section 81 (1) (c) prescribes that students so admitted shall not exceed the limits prescribed by the University and the State Government from time to time.

9. Had this been the only provision in the Act, it could have been probably suggested that the State Government has a role to play in fixing the limit.

10. However, as one goes to Section 83 sub section (3) clauses (c) it becomes clear that this is the only enabling provision for fixing the number of students in relation to the course or class or division of that course. The provision enables the University to take a decision in its Academic Council. The relevant provisions read as under:

"83. (1) On receipt of the permission from the State Government under Section 82 the Academic Council of the university shall consider grant of first time affiliation to the new college or institution by following the prescribed procedure given in sub-section (2) and after taking into account whether and the extent to which the stipulated conditions have been fulfilled by the college or institution. The decision of the Academic Council in this regard shall be final.

(2) For the purpose of considering the application for the grant of affiliation the Academic Council shall cause an inquiry by a Committee Constituted for the purpose by it.

(3) The Academic council shall decide:

(a) Whether affiliation should be granted or rejected;

(b) Whether affiliation should be granted in whole or part;

(c) subjects, courses of study, the number of students to be admitted;

(d) conditions, if any, which may be stipulated while granting or for granting the affiliation."

11. The Academic Council of the University which is one of the statutory functionaries of the University has to take a decision with regard to the number of students to be admitted in relation to a given subject, courses of study or any other activities where students are being admitted by an institution which is affiliated to the University.

12. In our opinion this is clearly a subject to be dealt with by one who is specialised in the field. Number of students cannot be arbitrarily fixed without keeping in mind the scope of education, requirement of infrastructure for the purpose and the availability of teachers who are professional in the field. In other words it is upon the availability of faculty, requirement of a particular pedagogy as well as the requirement of infrastructure.

13. The aforesaid requirements immediately would give rise to financial implication. For this purpose, our attention was drawn to Section 82, sub-section(5) which reads as under:

"82 (5) Out of the applications recommended by the university, the State Government may grant permission to such institutions as it may consider right and proper in its absolute discretion, taking into account the State Government's budgetary resources, the suitability of the managements seeking permission to open new institutions and the State level priorities with regard to location of institutions of higher learning:

Provided, however, that in exceptional case and for the reasons to be recorded in writing any application not recommended by the University may be approved by the State Government for starting a new college or institution of higher learning."

In our opinion sub-section 5 relates to the grant or otherwise of application for affiliation or recognition of the institutions. The number of seats obviously would form a very minor and small part of the entire exercise undergone for considering the question of grant of either affiliation or recognition. Obviously, in the matter of finance it is the State Government that must have final say.

13. Keeping in mind the aforesaid provision of Sub Sections 5 of Section 82 if one goes back to the Section 83 it is gathered that in matters where are no financial implication, obviously the University need not go back to the Government for seeking its approval. In the instant case also if one goes by the fact that by increasing the seats no financial burden is shown to be falling on the Government. Obviously there is no need for the University to go back to the Government after its Academic Council has taken a decision under section 83(3).

14. One more factor factually in the instant case is that in all three matters the petitioners are institutions not getting any grant from the Government. Obviously, therefore, in their case there will be no question of additional financial burden.

15. The result of the aforesaid decision therefore, is that while taking decision under Section 83(3) or exercising its power given to the University or to any of its functionaries under the said Act, the University need not go to the Government for its approval in all and every matter but before approaching the Government it should first decide whether the question involves any financial implication or not. In all the matters where the question of budgetary resources of the Government arise, the University shall have to take sanction of the - Government.

16. In the instant case when the University has approached the Government by letter dated 18.5.1999 and replied to by Government on 10.8.1999, the whole correspondence is redundant. It ought not have been insisted at all. No sanction is required when there are no financial implications. In absence of financial implication, no approval of the Government will be required either.

17. Net result, therefore, is that in all the matters for which powers are vested in the University and its different functionaries if there are no financial implications, it is open to the University and its functionaries to take appropriate decision on merits on each of the case. At the same time it is emphasised that in all the matters, though within the powers of the University and its functionaries, where there are financial implications or having effect on budgetary resources of the State Government, the University shall approach the State Government and take its approval or sanction as the case may be.

18. So far as present matters are concerned, therefore the decision taken by the Academic Council can straightaway be intimated to the respective management without waiting as because of the aforesaid reason neither approval nor sanction of the state Government is required. The University shall bear in mind the requirement of approaching the State Government in connection with the decision involving financial implication or having effect on budgetary resources of the State.

19. In order to see that in future there is no grievance either on the part of the student or on the part of the management with regard to either objecting paying or recovering of higher fees, as and when the decision is taken in this regard by the University, the students who are admitted in the current year shall be put to notice and shall be intimated in clear terms that the decision taken by the University with regard to increase of fees shall be binding on each of the students so admitted and on demand being made by the University the students shall pay off the balance amount within two weeks from the date of intimation. The intimation in this regard given by the respective management to the respective students in the form of notice as also an individual notice to each of the student shall be treated as a demand made by the University under this order.

20. In view of the aforesaid decision Rule is made absolute to the aforesaid extent only and the ad interim protection granted in Writ Petition No. 4315 of 1999 being no longer necessary, is vacated.

Issuance of certified copy is expedited.

14. Parties to act on a copy of this order authenticated by the Sheristedar of this Court.

Order accordingly.