

ITEM NO.1

COURT NO.11

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)...../2010
CC 10594/2010

(From the judgement and order dated 03/12/2008 in
of The HIGH COURT OF BOMBAY AT NAGPUR)

WP No. 2216/2006

ALARD COL.OF ENG.& MGT.& ANR

Petitioner(s)

VERSUS

STATE OF MAHARASHTRA & ORS.

Respondent(s)

(With appln(s) for permission to file SLP and office report)

Date: 15/07/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. Naushad Ahmad Khan,Adv.
Mr. Rajesh Kumar Verma, Adv.
For Mr. Aftab Ali Khan,A.O.R.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

Permission to file special leave petition is granted.

Delay condoned.

In this petition filed under Article 136 of the
Constitution, the petitioners, which are private colleges have
questioned the correctness of the directions given by the
Division Bench of Bombay High Court, Nagpur Bench in Writ

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Petition No.2216 of 2006 decided on 3.12.2008. The relevant

portions of that order read as under:-

"So far as the posts of Principal in the private
colleges are concerned, we approve the following
measures proposed by the University by noting that
the University has already issued a circular to all
such colleges directing their managements for taking
prompt and immediate steps to fill in these posts by
31st March, 2009 and every Management has been
directed to submit an undertaking to that effect.

a) Each individual case or such private
colleges would be evaluated as on 15th March, 2009,
so as to note down the steps taken to fill in the

post of Principal and if the recruitment process is seen to be in progress, the University may consider extending the dead line up to 31st May, 2009.

b) The Colleges which fail to fill in the post of Principal by 31st May, 2009, the University will issue orders in the first week of June, 2009 prohibiting admissions in the first year of the respective faculties for the academic year 2009-2010 and the names of such defaulting colleges would be notified in the local newspapers at the state level as well as the regional level.

c) If the students are admitted despite these prohibitory orders in the first year, the University will not grant enrollment to such unauthorized students nor would it permit the unauthorized students to appear for the examination.

d) The Colleges which would continue to be the defaulters in the next academic year (2010-2011), the University will prohibit the admissions for the first year and second year in that academic year and if the defaults continue at the end of the academic year 2010-2011, the University will be left with no option than to withdraw/cancel the affiliation of such Colleges. Undoubtedly the University will follow the due process of issuing a show cause notice etc. when it proceeds to withdraw/cancel the affiliation.

e) The names of the colleges where admissions have been prohibited as mentioned hereinabove will be intimated in writing to the Joint Director of Higher

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Education every year with a request to take appropriate stringent measures which the Government may direct.

f) The University will prepare data bank of all the lecturers/professors who are eligible for appointment to the post of Principal and such list shall be circulated to all the private colleges (aided and non-aided) on or before 31st January, 2009."

The grievance of the petitioners is that by relying upon the omnibus directions given by the Division Bench of the High Court in a public interest litigation, the authorities of University of Pune (for short, "the University") are not allotting students for admission in the petitioner colleges for the academic year 2010-11 despite the fact that they have complied with all the statutory requirements.

Shri Naushad Ahmad Khan, learned counsel for the petitioners invited our attention to the documents marked Annexure p-5 to P-9 to show that vide letter dated 6.5.2009, the University had granted permission for starting Alard College of Business Studies

for the academic year 2009-10 and submitted that even though regularly selected Principal was appointed vide letter dated 20.5.2009, the University authorities are not allowing admissions in petitioner no.2 college.

Learned counsel further submitted that information regarding selection of the Principal for petitioner no.1 college was given to the University as early as on 15.2.2001, but the latter has not taken action for approving the

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appointment and absence of regular Principal is being made a ground for refusing to allot students for the session 2010-11.

We have considered the submissions of the learned counsel but have not felt impressed because the petitioners have not produced any document to show that they were established after obtaining permission from the competent authority like All India Council for Technical Education, which has been established under the All India Council for Technical Education Act, 1987 (for short, "1987 Act"). The petitioners have also not produced material to show that they have complied with the conditions specified in Section 81 of the Maharashtra Universities Act, 1994 (for short, "1994 Act") and other provisions contained in Chapter X thereof as also the statutes framed thereunder. Therefore, it

is not possible to entertain the petitioners' prayer for issue of a direction to the University to allot students for admission for the academic year 2010-11.

A perusal of the documents marked Annexure P-6 to P-8 shows that Dr. Shyamkant R. Deore, who was appointed as Principal of petitioner No.2-Alard College of Business Studies on 20.5.2009, had tendered resignation on 25.8.2009 and the same was accepted by the Management of Alard Charitable Trust on 19.9.2009.

Thereafter, no other person is shown to have been appointed as Principal of Alard College of Business Studies. This being the

position, the petitioner no.2 cannot be said to have complied with

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the requirement of Section 81(1)(f) of the 1994 Act.

Insofar as petitioner No.1 is concerned, letter Annexure P-3

has been placed on record to show that Dr. Bhushan Joshi has been appointed as Principal on 21.5.2010.

This document is discredited

by the contents of Annexure P-9, which is a copy of letter dated 15.2.2010 sent by Secretary of the College Trust to the Registrar, Academic Section, University of Pune.

A reading of that letter

shows that selection for the posts of Principal, Professor, Assistant Professor, Lecturer and Librarian for Mechanical, E &

Tc, Electrical Computer, Civil, Applied science engineering

department was carried out on 13.2.2010 (Saturday) and report of

the Selection Committee was forwarded to the University on

15.2.2010. If the selection is said to have been made on

13.2.2010, it is impossible to comprehend as to how Dr. Joshi

could be offered appointment on 25.1.2010.

In view of the above, we do not find any valid ground much

less justification to entertain the petitioners grievance against

the directions given by the High Court that the University shall

not allot students to the colleges in which regular Principal has

not been appointed. We may add that the University cannot permit

admission in the colleges unless they fulfill the mandatory

conditions enshrined in 1987 Act and 1994 Act and the regulations/

statutes framed thereunder.

We are aware that in some cases this Court has granted 6

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months time to the colleges in Maharashtra to make appointment of

regular Principals but in none of those cases, the Court has

examined the issue of entitlement of the Management to establish

and run the college without fulfilling the mandatory provisions

contained in the 1987 and 1994 Acts.

Therefore, those orders

cannot be treated as precedent for granting relief to the

petitioners.

With the above observations, the special leave petition is

dismissed. Application for impleadment also stands disposed of.

While dismissing the special leave petition, we consider it

necessary to make it clear that if the petitioners have made

admissions without complying with the directions given by the High Court and the provisions contained in the 1987 and 1994 Acts and the relevant statutes and regulations and the university declines to recognize such admissions then the students shall be free to sue the petitioners for recovery of the fees deposited by them along with interest and also claim damages.

(A.D. Sharma)
Court Master

(Phoolan Wati Arora)
Court Master