Shivaji University

Vs

Bharti Vidyapeeth

Civil Appeal No. 1571 of 1999

(S.P. Bharucha, R.C. Lahoti JJ)

16.03.1999

JUDGMENT

Bharucha, J.

1. Delay condoned. Leave granted.

2. The order under challenge was passed by a Division Bench of the High Court of Bombay.

3. The first respondent educational institution was granted permission by the appellant university, subject to the approval of the third respondent, the medical Council of India, to start a law college at Sagli to provide only morning classes for a three year course. The permission of the third respondent not having been received, the college was not commenced during the academic year 1994-95. The same thing happened in respect of the academic year 1995-96.

4. On 13th June, 1995 the second respondent, the State of maharashtra, passed a resolution on the subject of permission for new law colleges on permanent unaided basis in Districts of the State where not a single law college existed. It noted that this Court was yet to hear and dispose of an appeal in respect of grant-in-aid to private law colleges in the State. (That decision was rendered on 16th August, 1995, in *State of Maharashtra v. Manubhai Pragaji Vashi & Ors., 1995(5) SCC 730)*. The resolution stated that till such time that appeal was disposed of, it applications and proposals were received to open law colleges in Districts where not a single law college existed, they would be considered. On 25th September, 1995 the first respondent made an application to the appellant for permission to start the said law college for the academic year 1996-97. On 28th September, 1995 such permission was declined on the ground that a law college already existed at Sangli.

5. On 20th August, 1996 the third respondent communicated to the first respondent its permission to start the said law college "for teaching three years with morning classes only from 1996-97", On 19th October, 1996 the Director of the appellant wrote to the 2nd respondent stating that the first respondent had sent a proposal for starting the said law college in year 1995-96 and the appellant's Board had recommended the aid proposal to the 2nd respondent, but it had not been given provisional sanction. The letter stated that the approval of the third respondent (referred to above) was considered valid for the year 1997-98 and it was, therefore, requested that orders be passed to start the said law college from June, 1997. On 30th October, 1996 the first respondent applied tot he appellant for permission to start the said law college for the academic year 1997-98. On 22nd November, 1996 a draft Perspective Plan was prepared by the appellant under the provisions of Section 82 of the maharashtra Universities Act, 1994. The application of the first respondent dated 30th October 1996 was rejected on 24th December, 1996. The reason for the rejection was that the

location of the said law college was outside the draft Perspective Plan and one law college already existed in Sangli. On 3rd February and 1st March, 1997 the appellant rote to the 2nd respondent requesting that its letter dated 19th October, 1996 be treated as cancelled. it stated that it had not recommended the proposal of the first respondent to start the said law college for the year 1997-98.

6. In April, 1997 the first respondent filed the writ petition upon which the judgment and order under challenge was passed. By an interim order the first respondent was permitted to start the said law college. In the judgment and order under challenge, the High Court found that the figures of population and the grant of permission to law colleges at smaller places in the area of operation of the appellant as also the Perspective Plan justified the opening of a morning law college at Sangli having regard to Sangli's population. The appellant had, for the earlier years, recommended the proposal to open the said law college. There was a need for opening a post-graduate Department of Law in the appellant-University, as appeared from certain guidelines and the Perspective Plan. The reasons given in the letters dates 28th December, 1995 and 24th December, 1996 rejecting the first respondent's proposal showed non-application of mind and arbitrariness. The affidavit of the second respondent did not disclose any policy decision which would go against the grant of the permission. The appellant was bound by the contents of its letter dated 19th October, 1996, which had neither been recalled nor cancelled. Assuming that the resolution dated 13th June, 1995 was valid, after the decision in Manubhai Pragaji Vashi's case (ibid) there was nothing to suggest that a policy decision had been taken not to permit an additional college even where there was a need for it and the appellant and third respondent had approved the law college. Upon this basis, the High Court passed the following order :

> "i) The rejection of the petitioner's proposal under letter dated 28th December, 1995 sent by the Deputy Registrar and its communication dated 15th January, 1996 is hereby quashed and set aside.
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> ii) The rejection of the petitioner's proposal under letter dated 24th December, 1996 and its communication on 3rd January, 1997 by the Deputy Registrar of the University is hereby quashed and set aside.
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> iii) In view of the approval accorded by the Bar Council of India under its letter dated 20th August, 1996 and the letter dated 19th October, 1996 issued by the Board of College and University Development, the petitioner's application for opening of a morning Law College, at Sangli shall be deemed to have been approved by the Shivaji University under sub-section(4) of Section 82 of the Maharashtra Universities Act, 1994 from the academic year 1997-98 onwards for a Three Year Degree Law Course.
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> iv) In view of the aforesaid the petitioner's application for permission to open a morning Law College at Sangli shall be deemed to have been granted by the State Government and permission shall be deemed to have been granted to open the said Law College under sub-section (5) of Section 82 of the Maharashtra Universities Act. 1994 from the academic year 1997-98 onwards for a Three Year Degree Law Course.
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> v) In view of the ad interim order passed by this Court on 19th June, 1997 and the order dated 17th July, 1998 passed in C.A. No. 5647 of 1998, we hereby direct that provisional affiliation be deemed to have been granted to the petitioner's college for the Academic Year 1997-98 and 1998-99 in accordance with the provision of Section

83 of the Maharashtra Universities Act, 1994.

vi) We, however, direct that for obtaining affiliation for the academic year 1999-2000 the petitioner will be required to make the requisite application and follow the procedure laid down under the Maharashtra Universities Act, 1994.

vii) With a view to obviating any hardships to the students who have been admitted during the Academic Year 1997-98 and 1998-99 under the orders passed by this Court on the 19th June, 1997 and 17th July, 1998 we direct the second respondent University to permit such students to appear for the requisite examinations and further to declare the results of the students who so appear. It is our unfortunate experience that despite the orders of this Court students or their parents are required to approach the court for (a) permission to appear in the examination, (b) for direction to declare their results and (c) permission to admit them in the next year. We wish to obviate such injustice to the students in particular."

7. It is difficult to hold that the Government Resolution dated 13th June, 1995 lays down, as a matter of policy, that where there is a single law college in a District of the State no other law college therein will be permitted. In the first place, the resolution was to operate only till such time as this Court rendered its decision in Manubhai Pragaji Vashi's case (ibid) and it provided that in that interregnum applications and proposals for the commencement of law colleges would be considered if received from Districts where no law college existed. In the second place, and assuming that is the policy, this is clearly arbitrary and unreasonable. Account has not to be taken of whether or not a law college exists in a District. What is relevant and what should be taken into consideration is the population which the existing law college serves and whether, therefore, thee is need for an additional college.

8. The refusal by the appellant to grant to the first respondent permission to start the said college based upon the same reason is, therefore, also arbitrary and unreasonable. The draft Perspective Plan is also to, more or less, the effect and the refusal based thereon is, therefore, also arbitrary and unreasonable.

9. To this extent, we are in agreement with the High Court and need not dilate further.

10. Where we differ is with the order that the High Court has passed, particularly in clause (iii) therefore, quoted above. In our view, it is a University which must decide whether or not it can support the proposal for the commencement of a new college. if in a given case the University has gone wrong in declining such permission by relying upon ground which is arbitrary or unreasonable or otherwise defective, the court should set aside such refusal and return the matter to the University for re-consideration in the light of its judgment.

11. In the instant case, we are in no doubt that the appellant was in error in refusing to accord permission to the first respondent to start the said law college only because a law college already existed at Sangli. That decision must, therefore, be set aside and the matter must go back to the appellant to consider the issue afresh. In doing so it must take into consideration what the population of Sangli District is, what population the existing law college serves and whether the said law college is, in this light, required. Having regard to the lapse of time, the appellant must do so within eight weeks.

12. Having regard tot he fact that he said law college has admitted students for the academic year 1998-99 pursuant to the High Courts interim order, whether that term comes to an end in the summer of 1999 or the winter of 1999, it is proper to permit the term to be completed and the students to take the examinations. For the purposes of following academic years, the decision to be rendered by the appellant as aforestated shall govern.

13. We do not consider it necessary to go into any other aspect for the purposes of this appeal.

14. Order on the appeal accordingly. No order as to costs.