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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2462 OF 2025

Symbiosis Open Education Soc.
Through Principal Director & Ors ...Petitioners

Versus

University Grants Commission
& Anr ...Respondents

Mr Ravi Bharadwaj, a/w Siddheshwar Biradar, for the
Petitioner.

Mr Rui Rodrigues, for the Respondent.

CORAM M.S. Sonak &
Jitendra Jain, JJ.
DATED: 4 March 2025

ORAL JUDGMENT (Per M.S.Sonak, J.):

1. Heard learned counsel for the parties.
2. Rule. The rule is made returnable immediately at the request of and with the consent of learned counsel for the parties.
3. The petitioner challenges the letter dated 19 December 2024 issued by the University Grants Commission (UGC) rejecting the petitioner's application seeking approval for Open Distance Learning (ODL) and Online (OL) programmes from the ensuing academic sessions. The petitioners contend that they satisfied the eligibility criteria in Regulation 3(A)(i) and 3(B)(b)(ii) of the UGC ODL/OL Regulations, 2022,

particularly after the petitioner university achieved National Institution of Ranking Framework (NIRF) Rank-1 as communicated on 12 August 2024.

4. Mr. Bharadwaj learned counsel for the petitioner, submitted that the judgment and order dated 28 June 2024 disposing of the petitioner's Writ Petition No.7339 of 2023 had at para 57 and 58 directed the UGC to consider the petitioner's case should the petitioners fulfil the NIRF ranking laid down by Ministry of Education, Government of India criteria in the meanwhile. He submitted that even the Hon'ble Supreme Court had directed the UGC to consider the petitioner's case for approval after the petitioner obtained NIRF Rank-1 effective from 12 August 2024.

5. Mr Bharadwaj submitted that there had been no consideration or, in any event, no fair consideration of the petitioner's case in the context of the NIRF ranking achieved by the petitioner. He pointed out that no opportunity of hearing was granted to the petitioner, and the impugned communication dated 19 December 2024 is unreasoned. He submitted that the petitioner fulfils the UGC criteria and without assigning any reasons or otherwise complying with principles of natural justice and fair play, the petitioner's application should not have been rejected in a summary fashion. On these grounds, Mr. Bharadwaj submitted that the impugned communication be set aside, and a Writ of Mandamus be issued to the UGC for grant of approval as applied for by the petitioner.

6. Mr. Rodrigues learned counsel for the UGC submitted

that the UGC does not act in a judicial or quasi-judicial capacity while considering applications for approvals, and no statute prescribed any hearing. He submitted that a mere Rank- 1 does not confer eligibility upon the petitioner because ranking has to be considered in the context of the various streams and overall ranking parameters. He submitted that for a university to claim eligibility based on NIRF ranking, the rank in a particular sub-group or category is not quite relevant. He submitted that the overall ranking of the University in India is applicable in such matters. He, therefore, submitted that there was no infirmity in the impugned communication dated 19 December 2024.

7. We have considered the rival contentions and perused the material on record.

8. The petitioner No.2/University was established as a State Private University under the Symbiosis Skill and Open University Act, 2017, effective 3 May 2017.

9. The petitioners desired to commence open and distance learning programmes or online programmes but faced difficulties given the UGC (Open and distance learning programmes and online programmes) Regulations, 2020. Therefore, the petitioners challenged regulations 3(A)(i) and 3(B)(b)(ii) of the UGC Regulations, 2020 before this Court by instituting Writ Petition No.7339 of 2023. This petition was disposed of by judgment and order dated 28 June 2024.

10. This court rejected the challenge to the constitutional validity of the impugned provisions. However, this Court agreed with the petitioner's contention that the NAAC

accreditation process was a misfit for an appropriate and reasonable accreditation of skilled universities since it relied on the 'one-size-fits-all' manual currently in vogue'. Accordingly, directions were issued to the UGC to take remedial measures to evolve the fair and reasonable criteria. Pending such process, the petitioner was held entitled to apply to the UGC for recognition to offer the proposed programme in the ODL and OL mode without awaiting the formulation of the proper accreditation, provided the petitioner fulfilled other stipulations and conditions.

11. Besides, in the context of NIRF ranking procedures, this Court made the following observations:

"57. Purely for completeness, we also clarify that we have reviewed the process for the NIRF rankings and are refraining from making any interference in relation to the same. Vide an email dated 2nd February, 2024 (when these proceedings were pending), the NIRF Helpdesk has confirmed that for 2024, two new segments have been introduced for skill universities and open universities. We are informed that SSPU has applied on 8th March, 2024.

58. We note that even for the NIRF process, there is yet another time deferral NIRF rankings can only be obtained by institutions that have graduated at least three batches of students in full-time undergraduate programmes (minimum duration of three years) or postgraduate programmes (minimum duration of two years). However, since a special category for ranking of skill universities has indeed been created by NIRF, we refrain from any further comment on the NIRF ranking. Suffice it to say, if SSPU obtains a ranking from the NIRF that makes the NAAC accreditation unnecessary, it would be entitled to proceed with offering the ODL and OL courses without waiting for the NAAC accreditation."

12. The UGC challenged this court's judgment and order dated 28 June 2024 before the Hon'ble Supreme Court by instituting Special Leave Petition (Civil) Diary No.38965 of

2024. Notices were issued on 11 November 2024, and in the meanwhile, the Hon'ble Supreme Court issued the interim stay of the operation and implementation of Paragraph No.70 (e to h) and any action pursuant thereto of this court's order dated 28 June 2024, disposing of the Writ Petition No.7339 of 2023.

13. When the matter was pending before the Hon'ble Supreme Court, the petitioner achieved NIRF Rank-1. According to the petitioners, irrespective of NAAC criteria, the petitioner now fulfilled the alternate criteria prescribed in Regulation-3(A)(i) of the UGC Regulations, 2020. Accordingly, the petitioners applied to the UGC for approval based on the NIRF ranking.

14. The Hon'ble Supreme Court, in the pending Special Leave Petition, by its order dated 9 December 2024, directed the UGC to consider the petitioner's application expeditiously and in accordance with the law.

15. The UGC, by impugned communication dated 19 December 2024, has disposed of the petitioner's application for approval.

16. In the impugned communication, the UGC has stated as follows:

In view of above, it is regretted to inform you that your HEI is not eligible as per University Grants Commission (Open and Distance Learning Programmes and Online Programmes) Regulations, 2020 and its amendments for the following reasons:-

► *The HEL is not yet accredited by National Assessment and Accreditation Council (NAAC).*

The HEI is not yet ranked in top-100 in University Category by National Institutional Ranking Framework (NIRF)..

Further, it is also to be informed that sub-regulation 7 of regulation 5 of the UGC (ODL Programmes and Online Programmes) Regulations, 2020 stipulates as under:-

"No Higher Educational Institution shall offer any Open and Distance Learning Programme and/or Online Programme and admit learners thereto unless it has been granted recognition by the Commission and admission shall not be made in anticipation of the recognition."

This may please be treated as MOST URGENT.

This issues with the approval of the Competent Authority.

17. Admittedly, the petitioners were not heard or given any opportunity to explain their version of how they were eligible for approval under Regulation 3(A)(i) on account of securing Rank-1 from the NIRF. The regulation provides that any higher educational institution may apply for offering programmes through open and distance learning modes, which fulfils the following conditions, namely :

(i) shall be accredited by the National Assessment and Accreditation Council with minimum score of 3.01 on a 4-point scale;

or

having rank in top-100 in University category of National Institutional Ranking Framework, at least once in two preceding cycles (at the time of application).

18. The petitioner had placed on record before the UGC of its achieving NIRF ranking 1. Therefore, the UGC was required to consider this document placed on record by the petitioner and then decide whether the petitioner fulfilled the eligibility criteria referred to in Regulation 3(A)(i) of the UGC Regulations 2020. The impugned communication simply states that NIRF has not yet ranked the petitioner in the top 100 in the University category. Such a communication can hardly be styled as some reasoned communication. To that extent, Mr. Bharadwaj's contention that the petitioner's application for approval has not been considered fairly or consistent with the

principles of natural justice by UGC deserves acceptance.

19. After the above developments, the petitioner withdrew IA No.6464 of 2025 filed under the Special Leave Petition against this court's order dated 28 June 2024 in Writ Petition No.7339 of 2023, with liberty to approach this Court to assail the UGC's communication dated 19 December 2024. Pursuant to this liberty, the present petition came to be filed.

20. Mr. Rodrigues's contention about the proper interpretation of Regulation 3(A)(i) and what it means by having ranked in the top 100 in the university category of the NIRF ranking framework may or may not be correct. At this stage, we do not propose to decide on this issue. However, in the present case, we think the petitioner should have been granted an opportunity to present their version. Now that the petitioners tentatively have an idea about the UGC reasoning, it is only appropriate that the petitioners also have an opportunity to meet such reasoning and persuade the UGC about the correctness of its version.

21. The UGC must also communicate its reasons in such matters. A mere communication of the conclusion would not comply with the requirement of fair play. While the UGC is not expected to write an elaborate judgment, the applicant must get a fair idea of the reasons in support of an adverse conclusion.

22. Besides, the UGC, before concluding one way or the other, can always indicate to the applicant the difficulties or the problems it sees or envisages in considering the approval application favourably. This would afford the applicant an

opportunity to respond and convince the UGC of its version of the matter. Even in administrative matters or where the statute may not have explicitly prescribed compliance with natural justice, adopting a fair and reasonable procedure is not to be jettisoned. Principles of natural justice are to be read even into the unoccupied interstices of a statute.

23. Therefore, we quash and set aside the impugned communication dated 19 November 2024, not on merits but by faulting the decision-making process. In judicial review, we examine the decision-making process, not the conclusion. The conclusion or the decision may or may not be correct. But, in a given case, even a decision which may appear *prima facie* correct would be vulnerable if the decision-making process was unfair or otherwise infirm.

24. We direct the UGC to reconsider the petitioner's application dated 12 November 2024 in accordance with law and on its own merits. The UGC is directed to grant the petitioners hearing opportunity. Now that they have an idea of the UGC's tentative version, the petitioners can file a synopsis of their version within two weeks of the uploading of this order.

25. All contentions of all parties are, however, left open because we have not made any observation on the merits of the matter. After hearing the petitioners and considering the petitioner's application in accordance with the law, the UGC should decide the application by issuing a reasoned communication to the petitioner. This exercise must be completed within 8 weeks from the date of uploading of this

order. Mr. Rodrigues states that he will communicate the same to the UGC no sooner than when this order is uploaded. The petitioner is also permitted to communicate the authenticated copy of this order to the UGC.

26. The rule is made absolute in the above terms without any cost order. All concerned to act upon the authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)