

मा.राज्य माहिती आयुक्त, राज्य माहिती आयोग, विदर्भ क्षेत्र, नागपूर यांच्या समोरील  
माहितीचा अधिकार अधिनियम, २००५ च्या कलम १९(३) अंतर्गत अपील -  
अपील क्रमांक १७७२/२००७

१) श्री राजकुमार शामराव भोयर,  
सचिव, यशवंतराव चव्हाण अभियांत्रिकी महाविद्यालय  
शिक्षकेत्तर कर्मचारी संघटना, हिंगणा रोड, वानाडोंगरी,  
नागपूर.

अपीलकर्ता

वि रु ध्द

२) प्रथम अपीलीय अधिकारी तथा प्राचार्य  
यशवंतराव चव्हाण अभियांत्रिकी महाविद्यालय  
हिंगणा रोड, वानाडोंगरी, नागपूर.

३) जन माहिती अधिकारी तथा प्राचार्य,  
यशवंतराव चव्हाण अभियांत्रिकी महाविद्यालय  
हिंगणा रोड, वानाडोंगरी, नागपूर.

उत्तरवादी

( आदेश पारित दिनांक १.९.२००८ )

नि र्ण य

अपीलकर्ता यांनी दिनांक २७.५.२००७ रोजी राज्य माहिती आयोगाकडे माहितीचा  
अधिकार अधिनियम, २००५ चे कलम, १९ (३) अन्वये द्वितीय अपील दाखल केली आहे.  
सदरच्या द्वितीय अपीलाची सुनावणी दिनांक २.२.२००८ घेण्यात आली. अपीलकर्ता हजर होते.  
तसेच उत्तरवादी क्रमांक १ व २ तर्फे सौ. पी.जे. चौधरी सुनावणीकरीता हजर होत्या. व अॅड.  
डी.एन. माथूर यांनी युक्तीवाद केला.

अपीलकर्ता यांना दिनांक १४.३.२००७ रोजी माहिती अधिकारी तथा प्राचार्य, यशवंतराव  
चव्हाण अभियांत्रिकी महाविद्यालय वानाडोंगरी यांचेकडे " महाविद्यालयातील शिक्षकेत्तर कर्मचारी  
व त्यांचे वेतन दिनांक १.१.१९९६ ते ३१ जुलै, २००० पर्यंत-

// २ //

- १) यशवंतराव चव्हाण अभियांत्रिकी महाविद्यालयातील कार्यरत कर्मचा-यांची यादी ( काही बदल झाला असल्यास त्या समेत).
- २) वरील यादीतील प्रत्येक कर्मचा-याला चौथ्या वेतन आयोग व सरकारी शिफारशी नुसार १.१.१९९६ ते ३१ जुलै, २००० पर्यंत देण्यात आलेले मासिक वेतन.
- ३) वरील यादीतील प्रत्येक कर्मचा-याला पाचवा वेतन आयोग व सरकारी शिफारशी नुसार १.१.१९९६ ते ३१ जुलै, २००० पर्यंत देय्य असलेले मासिक वेतन." माहिती व्यक्तीशः घेणार असे नमूद केलेले दिसून येते.

सदरच्या अर्जाचे अनुषंगाने अपीलकर्ता यांना कोणत्याही प्रकारची माहिती विहित मुदतीत माहिती उपलब्ध झाली नाही म्हणून अपीलकर्ता यांनी दिनांक १६.४.२००७ रोजी प्रथम अपीलीय अधिकारी म्हणून प्राचार्य यांचेकडेच प्रथम अपील दाखल केलेले दिसून येते. व त्याप्रमाणेही कोणत्याही प्रकारची माहिती उपलब्ध झाली नाही म्हणून अपीलकर्ता यांनी राज्य माहिती आयोगाकडे द्वितीय अपील दाखल केलेले दिसून येते. द्वितीय अपीलाच्या संदर्भामध्ये सदरचे महाविद्यालय हे खाजगी विना अनुदानित महाविद्यालय असल्यामुळे माहितीचा अधिकार अधिनियम, २००५ हा लागू नसल्यामुळे माहिती दिली नाही किंवा आदेश देण्याचा प्रश्न प्रथम अपीलात उपस्थित होत नाही असा खुलासा सादर केला आहे. व सदरच्या संस्थेचे वकील श्री डी.एन. माथूर यांनी सुध्दा दिनांक १८.६.२००८ रोजी खुलासा दाखल केला आहे.

अपीलकर्ता यांनी दिनांक ४.७.२००८ रोजी खुलासा दाखल केला आहे. तसेच आज पुन्हा खुलासा सुध्दा दाखल केला आहे. उत्तरवादी यांचे तर्फे उत्तरवादी यांचे वकील डी.एन. माथूर यांनी दिनांक १८.६.२००८ रोजी निवेदन दाखल केले आहे. व त्याचे समर्थनार्थ केंद्रिय माहिती आयोगाचा दिनांक २८.१.२००८ च्या निर्णयाची प्रत दाखल केली आहे.

अपीलकर्ता यांनी युक्तीवाद करताना असे सांगितले की, सदरचे महाविद्यालय हे विद्यापीठ अधिनियमाप्रमाणे पदवी प्रदान करतात. व विद्यापीठ नियम हे राज्य विधी मंडळाने तयार केलेले नियम आहेत. तसेच युनिव्हर्सिटी ग्रांट कमिशन प्रमाणे कोणतीही संस्थेस कायद्याने स्थापन झालेल्या विद्यापीठाशिवाय पदवी प्रदान करता येत नाही. व्यावसायिक अभ्यासक्रम शिकविणा-या खाजगी संस्थांना अभियांत्रिकी महाविद्यालय असेल तर ऑल इंडिया कौन्सिल ऑफ टेकनिकल एज्युकेशन अॅक्ट या कायद्याप्रमाणे परवानगीची आवश्यकता आहे. तसेच Societies Registration Act व Bombay Public Trust Act १९५० प्रमाणे पंजीबद्ध असल्याने सार्वजनिक प्राधिकरणाचे व्याख्येत येते. त्या परवानगीशिवाय पदविला मान्यता मिळत नाही. तसेच विद्यापीठाच्या संलग्नतेशिवाय कोणत्याही प्रकारची पदवी महाविद्यालय जरी विना अनुदानित असले तरी विद्यापीठाची पदवी प्रदान करता येत नाही व त्यामुळे सदरच्या महाविद्यालयास माहितीचा अधिकार अधिनियम, २००५ च्या तरतूदी लागू होतात. तसेच सहसंचालक, तंत्र शिक्षण संचालनालय यांचे माहिती अधिकारी, तंत्र शिक्षण प्रादेशिक कार्यालय, नागपूर यांनी श्री माधव कोतवाल यांना विना अनुदानित संस्थेच्या संदर्भामध्ये माहितीचा अधिकार अधिनियम, २००५ हा लागू आहे असे कळविण्यात आलेले पत्र

दाखल केलेले आहे. श्रीमती अ.सी. अत्तार, माहिती अधिकारी, तंत्रशिक्षण संचालनालय, म.रा. मुंबई यांनी सहसंचालक, तंत्रशिक्षण विभागीय कार्यालय, नागपूर व इतर विभागीय कार्यालयांना दिनांक १०.८.२००६ रोजी महाराष्ट्र माहितीचा अधिकार अधिनियम, २००५ च्या अंमलबजावणी संदर्भामध्ये सर्व विना अनुदानित संस्थांना माहितीच्या अधिकाराच्या नियमाची प्रत पाठवावी. संस्थेमध्ये माहिती अधिकारी, सहाय्यक माहिती अधिकारी यांचे नावाचे ठळक अक्षरात बोर्ड लावावे असे सूचित करण्यात यावे, असे कळविण्यात आलेले पत्र तसेच दिनांक २३.८.२००६ रोजी सह संचालक, तंत्रशिक्षण प्रादेशिक कार्यालय, नागपूर यांनी सर्व प्राचार्य, तंत्र शिक्षण संचालनालय प्रादेशिक कार्यालया अंतर्गत सर्व विना अनुदानित संस्था पदवी/पदविका, तंत्रनिकेतने/तत्सम संस्था/औषध निर्माण संस्था व इतर सर्व तंत्र अभ्यासक्रम संस्था यांना माहितीचा अधिकार अधिनियम, २००५ हा सर्व अशासकिय विना अनुदानित संस्थांना लागू असल्याबाबत शासनाचे पत्र क्रमांक माहिती २२००५/(४६७/०५)प्राशि-२, उच्च व तंत्रशिक्षण विभाग, म.रा. मुंबई व विधी व न्याय विभागाच्या टिपणी नुसार या कार्यालयाला कळविण्यात आलेले आहे. त्यानुसार माहितीच्या अधिनियमान्वये आपण आपल्या स्तरावर माहिती अधिकारी, सहाय्यक माहिती अधिकारी यांच्या नियुक्त्या करण्यात याव्यात. व तसेच नावांचा ठळक अक्षरातील बोर्ड लावण्यात यावा अशा निर्देशाच्या संदर्भात दिलेल्या पत्रांच्या प्रती दाखल केलेल्या आहेत. पुन्हा दिनांक २४.७.२००६ रोजी कक्ष अधिकारी, म.शा. उच्च व तंत्रशिक्षण विभाग यांनी संचालक, तंत्र शिक्षण संचालनालय यांना दिलेल्या पत्राची प्रत सुध्दा दाखल केली आहे. दिनांक ३१.८.२००७ रोजी सुध्दा शासनाचे उपसचिव, अ.मा.भट्टलवार यांनी राज्य माहिती आयोगास पाठविलेल्या पत्रामध्ये शिक्षण संचालक (माध्यमिक/उच्च माध्यमिक) यांनी

त्यांचे पत्र क्रमांक सं.२००५/केमाअ/१५-क(०८)/२८२९८/२४२, दिनांक ३०.१२.२००५ अन्वये सर्व क्षेत्रिय अधिका-यांला कळविले आहे की, शासन मान्यताप्राप्त व शासन नियंत्रणातील सर्व अनुदानित, विना अनुदानित खाजगी शिक्षण संस्थांना व अशा संस्था मार्फत चालविण्यात येणा-या सर्व प्राथमिक, माध्यमिक व उच्च माध्यमिक शाळांना तसेच अध्यापक विद्यालयांना माहितीचा अधिकार अधिनियम लागू आहे. त्याप्रमाणे संबंधितांनी कार्यवाही करण्याच्या सूचना शिक्षण संचालक, (माध्यमिक/उच्च माध्यमिक), महाराष्ट्र राज्य, पुणे- यांनी दिलेल्या आहेत, असे कळविले आहे. त्या पत्राची प्रत सुध्दा सोबत दिलेली आहे. याप्रमाणे संस्थेस व महाविद्यालयास माहितीचा अधिकार अधिनियमाच्या तरतूदी लागू असल्याने त्यांना माहिती उपलब्ध करून देणे बंधनकारक आहे.

सदरच्या द्वितीय अपीलाच्या संदर्भामध्ये उत्तरवादी यांनी खुलासा दाखल करताना खुलाशामध्ये सदरचे महाविद्यालय हे खाजगी संस्थेचे असल्यामुळे व शासनाची कोणत्याही प्रकारचे आर्थिक मदत नसल्यामुळे तसेच कोणत्याही अधिनियमाच्या तरतूदी प्रमाणे स्थापन झालेले नसल्यामुळे व शासनाचे कोणतेही प्रकारचे नियंत्रण नसल्यामुळे अधिनियमाच्या कलम २ (एक)(ज) मधील " सार्वजनिक प्राधिकरण " या संज्ञेच्या व्याख्येप्रमाणे सार्वजनिक प्राधिकरण होत नसल्यामुळे सदरचा अधिनियम हा महाविद्यालयास लागू होत नसल्यामुळे अपीलकर्ता यांचे अपील हे फेटाळण्यास पात्र आहे.

#### WRITTEN NOTES OF ARGUMENTS ON BEHALF OF RESPONDENTS

The Respondents named above most humbly and respectfully submit the following arguments for kind consideration of this Honorable Court:

// & //

၅. That the instant matter has been filed by the Appellant before this Honorable Court for direction against Respondents to furnish the information sought by him under Right to Information Act, ၃၀၀၄ relating to salary paid by Respondents to each employee during ၁၃၃၆ ၃၅<sup>st</sup> July ၃၀၀၀.

၃. That it is respectfully submitted that the Respondents are not the public authority and hence not governed by the provisions of Right of Information Act ၃၀၀၄. The Preamble of the Act declares that it has been enacted with the object of securing access of citizen to the information under control of public authorities, in order to promote transparency and accountability in the working of every public authority. Therefore, for application of this Act, the first criterion is that the authority must be a public authority within the meaning of Section ၃ (h) of the Act. Since the Respondents are not public authority, hence not bound to supply the information sought by Appellant under the Act.

၃. That the definition of the term public authority provided in Section ၃ (h) of Right to information Act ၃၀၀၄ says that Public Authority means any authority or body or institution of the Government established or

constituted (a) by or under the Constitution; (b) by any other law made by Parliament, (c) by any other law made by State Legislature; (d) by notification issued or order made by the appropriate Government and includes any (i) body owned, controlled or substantially financed; (ii) non Government organization substantially financed; directly or indirectly by funds provided by the appropriate Government.

8. That it is respectfully submitted that Respondents do not fall within the scope of the above definition of the term public authority given in Right to Information Act 2005. The Respondent College is run by Nagar Yuvak Shikshan Sanstha registered under public trust. It is not established or constituted by a notification or order of the appropriate Government. It is also not owned controlled or substantially financed by Government. The Respondent College does not receive any grants from the Government. In view of this, the Respondent College cannot be termed as a public authority.

9. That for application of Right to Information Act 2005, it is necessary that the authority must be a public authority which Respondents are not. Hence Respondents cannot be compelled to

// ८ //

supply the information sought by the Appellant under the provision of this Act.

ξ. That the definition of the term public authority employs the word means and hence it is restrictive and exhaustive in nature. As such, no more enumerations can be added to the list provided by Legislature by way of ejusdem generic. Moreover, settled principles of interpretation strictly prohibit addition of words or to read something which is not there or to supply to casus omissus if any. The definition is clear and free from ambiguity and as such nothing can be read between the lines. The scope of definition cannot be enlarged by inserting something which is not provided for.

ϑ. That the appellant is placing reliance on a government instruction which says that the Right to Information Act २००५ shall apply to non granted private institutions also. It is respectfully submitted that the said instruction is inconsistent with the statutory provision. Honorable Apex Court has held in number of cases that government instructions cannot frustrate the provisions of law and in case of inconsistency, shall have to succumb to legal provisions. Therefore, the government instructions



// १ //

relied upon by the applicant does not succor his case. The law shall prevail.

८. That the information sought by the appellant relates to personal information of each employee. Section ८ (i) provides exemption from disclosure of such information, which relates to personal information the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of individual. Therefore, Respondents cannot be asked to furnish to the appellant the information sought by him.

९. That the Honorable Central Information Commission in Anil Chintaman Khare Vs. BCCI has held that to bring an entity as a public authority within the ambit of the Right to Information Act २००५, it has to satisfy at least one of the requirements of Section २ (h). In the present case BCCI as explained in its comments, does not fall under any of the categories stipulated in Section २ (h). Registration under an Act is different from being established under an Act. Therefore, merely because BCCI is registered under Societies Registration Act, it does not bring the

// १० //

BCCI within the purview of Right to Information Act २००५. Accordingly, since BCCI is not a public authority in terms of Section २(h) of the Act, no direction can be given to BCCI to furnish the information to the appellant and accordingly the appeal is dismissed.

१०. That the instant matter is identical. The ratio laid in the above matter is therefore applicable. The Respondents do not fall under any of the categories stipulated in Section २(h), merely because the Nagar Yuvak Shikshan Sanstha which runs the Respondent College is registered under public trust, the Respondent College does not come within the purview of Right to Information Act २००५. Since the Respondent College is not a public authority in terms of Section २(h) of the Act, no direction can be given to it to furnish the information to the appellant.

११. That in view of above submissions, this Honorable Court may be pleased to declare that the Respondent College is not a public authority within the meaning of Section २(h) of Right to Information Act २००५ and hence does not deserve any direction from this Honorable Court as prayed for in the appeal. The appeal may therefore be dismissed."

"Public Authority" means any authority or body or institution of self government established or constituted,-

- a) by or under the constitutions;
- b) by any other law made by Parliament;
- c) by any other law made by State Legislature;
- d) by notification issued or order made by the appropriate Government, and includes any-

- i) body owned, controlled or substantially financed;
- ii) non Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government."

उपरोक्त महाविद्यालय हे वरील व्याख्येप्रमाणे सकृत दर्शनी संसदेने तयार केलेल्या कोणत्याही अन्य कायद्याद्वारे गठीत केलेले नाही. सकृत दर्शनी राज्य विधान मंडळाने तयार केलेल्या कोणत्याही कायद्याद्वारे गठीत केलेले नाही. तसेच शासनाकडून निधीद्वारे प्रत्यक्ष किंवा अप्रत्यक्षपणे मोठ्या प्रमाणात वित्त पुरवठा सुध्दा केल्या जात नाही असे दिसते. परंतु, गठित 'constituted' किंवा स्थापन 'established' हया शब्दाची व्याप्ती तपासून पहाणे आवश्यक आहे. तसेच व्याख्येतील (घ) मधील समुचित शासनाने काढलेल्या अधिसूचनेच्या द्वारे किंवा आदेशाद्वारे स्थापन करण्यात आलेले किंवा गठीत करण्यात आलेले कोणतेही प्राधिकरण किंवा निकाय या तरतुदी बरोबर तपासणे आवश्यक आहे. तसेच "समुचित शासनाचे नियंत्रण

// १२ //

असलेले" या संदर्भात अपीलकर्ता यांनी उपरोक्त अधिनियमांचा संदर्भ दिला असल्याने त्या अधिनियमांच्या तरतुदी या व्याख्येशी सुध्दा तपासणे आवश्यक आहे.

उपरोक्त संबंधित अपीलकर्ता यांनी निदर्शनास आणलेल्या अधिनियमांच्या तरतुदी व विना अनुदानित खाजगी महाविद्यालयांच्या बाबत मा. सर्वोच्च न्यायालय किंवा मा. उच्च न्यायालयाचे निर्णय आहेत काय याची माहिती घेणे संयुक्तिक असल्याने उन्नीकृष्णन विरुद्ध स्टेट ऑफ आंध्र प्रदेश (१९९३)-१, सुप्रिम कोर्ट केस ६४५, अे.आय.आर. १९९८, पंजाब अँड हरियाणा-१, तसेच अे.आय.आर. २००८ पंजाब अँड हरियाणा-११७ या केस मधील निर्णय आयोगाने अवलोकन केले.

उन्नीकृष्णन जे.पी. अँड अदर विरुद्ध स्टेट ऑफ आंध्र प्रदेश आणि अदरर्स या याचिकेमध्ये मा. सर्वोच्च न्यायालयाच्या पुर्ण पीठाने खाजगी विना अनुदानित/अनुदानित/संलग्न व्यावसायिक अभ्यासक्रम असलेल्या शिक्षण संस्थेच्या संदर्भामध्ये उदा. वैद्यकिय/अभियांत्रिकीच्या प्रवेश व कॅपिटेशन फी घेण्याच्या संदर्भामध्ये जो निर्णय दिलेला आहे, त्या निर्णयामध्ये परिच्छेद १८७ मध्ये युनिव्हर्सिटी ग्रान्ट कमिशन अँक्ट, १९५६ च्या तरतूदी व परिच्छेद १८९ मध्ये ऑल इंडिया कौन्सिल फॉर टेकनिकल एज्युकेशन अँक्ट, १९८७ च्या तरतूदीची चर्चा केली आहे. ती खालीलप्रमाणे आहे. ( पान क्रं.७४२ ते ७४६)

" University Grants Commission Act.

१८७. The University Grants Commission Act was enacted by the Parliament in १९५६ to provide for the coordination and determination of

// ၄၃ //

standards in universities and for that purpose to establish a University Grants Commission. Chapter III deals with the powers and functions of the Commission Section ၄၃ empowers the Commission to take, in consultation with the Universities and other concerned bodies, all such steps as it may think fit for the promotion and coordination of university education and for the determination and maintenance of standards of teaching, examination and research in the Universities. Section ၄၃-A is relevant for our purposes. Clause (a) in sub section (၄) defines the expression ' affiliation' . It reads;

"၄၃-A(၄)(a) ' affiliation' together with its grammatical variations, includes in relation to a college, recognition of such college by association of such college, with, and admission of such college to the privileges of, a University" Clause (b) defines the expression ' college' in the following words;

၄၃-A (၄)(b) ' college' means any institution, whether known as such or by any other name which provides for a course of study for obtaining any qualification from a university and which, in accordance with the rules and regulations of such university, is recognized as competent to

provide for such course of study and present students undergoing such course of study for the examination for the award of such qualification;" Sub-section (१) of Section २२ which occurs in Chapter IV declares that "the right of conferring or granting degree shall be exercised only by a University established or incorporated by or under a Central Act, a provincial Act or a State Act or an institution deemed to be a University under Section ३ or an institution specially empowered by an Act of Parliament to confer or grant degrees". Sub-section (२) emphatically declares that "save as provided in sub-section(१), no person or authority shall confer or grant or hold himself or itself out as entitled to confer or grant any degree". Sub-section (३) defines the expression ' degree'. It means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette". Section २३ prohibits the use of the word ' University' in the name of any institution other than a University established or incorporated under an enactment or a deemed University. Section २४ provides for penalties for violation of Section २२ and २३. Section २५ confers the rule-making power upon the Central Government

// १५ //

while Section २६ confers the regulation-making power upon the Commission. The First Schedule mentions the names of the Universities and the recognized medical qualifications awarded by them. Same is done by Part I of the Third Schedule.

All India Council for Technical Education Act, १९८७;

१८९. This Act has been made by the Parliament for the establishment of the ' All India Council for Technical Education' with a view to the proper planning and coordinated development of the technical education system throughout the country, promotion of qualitative improvement of such education and other allied matters. Section ३ of the Act provides for the establishment of the Council while Section १० specifies the functions of the Council. Apart from directing generally that the Council shall take all such steps as it may think fit for ensuring coordinate and integrated development of technical education and maintenance of standards, the Act specifically empowers the Council, inter alias, to " (i) fix norms and guidelines for charging tuition and other fees; (k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned, and (n) take

// १६ //

all necessary steps to prevent commercialization of technical education ". It is true; there is no express provision in the Act which says that no engineering college or any other college or institution imparting technical education shall be established except with the permission of the Council. But this may be for the reason that such a power was intended to be exercised by the Council itself if it thinks necessary to do so. We are of the opinion that the vast powers conferred upon the Council by Section १०, including those specified above, do extend to and entitle it to issue an order to the above effect. It can also say that even in the existing institutions, no new course, faculty or class shall be opened except with its approval. It can also pass appropriate directions to the existing institution as well for achieving the purposes of the Act. Such an order may indeed be necessary for a proper discharge of the wide-ranging functions conferred upon the Council.

परिच्छेद १९२ व त्यावरून खालीलप्रमाणे मा. पूर्ण पिटाने परिच्छेद २०३, २०४ मध्ये खालीलप्रमाणे निष्कर्ष काढलेला आहे तो खालीलप्रमाणे -

२०३. For the purpose of these cases, we shall proceed on the assumption that a person or body of persons has a right to establish an



educational institution in this country. But this right, we must make it clear, is not an absolute one. It is subject to such law as may be made by the State in the interest of general public.

२०४. We must, however, make it clear, and which is of crucial importance herein, that the right to establish an educational institution does not carry with it the right to recognition or the right to affiliation. In Ahmedabad St.Xaviers College Society vs. State of Gujarat it has been held uniformly by all the nine learned Judges that there is no fundamental right to affiliation. Ray, C.J., stated that this has been "the consistent view of this Court". They also recognized that recognition or affiliation is essential for a meaningful exercise of the right to establish and administer educational institution. Recognition may be granted either by the Government or any other authority or body empowered to accord recognitions. Similarly, affiliation may be granted either by the University or any other academic or other body empowered to grant affiliation to other educational institutions. In other words, it is open to a person to establish an educational institution, admit students, impart education, conduct examination and award certificate to them. But he, or the

// १८ //

educational institution has no right to insist that the certificates or degrees (if they can be called as such) awarded by such institution should be recognized by the State- much less have they the right to say that the students trained by the institution should be admitted to examinations conducted by the University or by the Government or any other authority, as the case may be. The institution has to seek such recognition or affiliation from the appropriate agency. Grant of recognition and /or affiliation is not a matter of course nor is it a formality. Admission to the privileges of a University is a power to be exercised with great care, keeping in view the interest of the general public and the nation. It is a matter of substantial significance- the very life blood of a private educational institution. Ordinarily speaking, no educational institution can run or survive unless it is recognized by the Government or the appropriate authority and/or is affiliated to one or the other Universities in the country. Unless it is recognized and /or affiliated as stated above, its certificates will be of no use. No one would join such educational institution. As a matter of fact, by virtue of the provisions of the U.G.C. Act, noticed hereinabove, no educational

// १९ //

institution in this country except a University is entitled to award degrees. It is for this reason that all the private educational institutions seek recognition and/or affiliation with a view to enable them to send the students trained by them to appear at the examinations conducted by the Government/University will award its degree/diploma/certificate to them. These educational institutions follow the syllabus prescribed by the Government/University, have the same courses of study, and follow the same method of teaching and training. They do not award their own degrees/qualifications. They prepare their students for University/Government examinations, requests the University/Government to permit them to appear at the examinations conducted by them and to award the appropriate degrees to them. Clearly and indubitably, the recognized/affiliated private educational institutions, supplement the function performed by the institutions of the State. Theirs is not an independent activity but one closely allied to and supplemental to the activity of the State. In the above circumstances, it is idle to contend that imparting of education is a business like any other business or that it is an activity akin to any other activity like building of roads, bridges

// २० //

etc. In short, the position is this: No educational institution except a University can award degrees (Sections २२ and २३ of the U.G.C. Act.) The private educational institutions cannot award their own degrees. Even if they award any certificates or other testimonials they have no practical value inasmuch as they are not good for obtaining any employment under the State or for admission into higher courses of study. The private educational institutions merely supplement the effort of the State in educating the people, as explained above. It is not an independent activity. It is an activity supplemental to the principal activity carried on by the State. No private educational institution can survive or subsist without recognition and/or affiliation. The bodies which grant recognition and/or affiliation are the authorities of the State. In such a situation, it is obligatory-in the interest of general public-upon the authority granting recognition or affiliation to insist upon such conditions as are appropriate to ensure not only education of requisite standard but also fairness and equal treatment in the matter of admission of students. Since the recognizing/affiliating authority is the State, it is under an obligation to impose such conditions as part of its duty enjoined upon it

by Article १४ of the Constitution. It cannot allow itself or its power and privilege to be used unfairly. The incidents attaching to the main activity attach to supplemental activity as well. Affiliation/recognition is not there for anybody to get it gratis or unconditionally. In our opinion, no Government, authority or University is justified or is entitled to grant recognition/affiliation without imposing such conditions. Doing so would amount to abdicating its obligations enjoined upon it by Part III; its activity is bound to be characterized as unconstitutional and illegal. To reiterate, what applies to the main activity applies equally to supplemental activity. The State cannot claim immunity from the obligations arising from Articles १४ and १५. If so, it cannot confer such immunity upon its affiliates. Accordingly, we have evolved-with the help of the counsel appearing before us and keeping in view the positive features of the several Central and State enactments referred to hereinbefore- the following scheme which every authority granting recognition/affiliation shall impose upon the institutions seeking such recognition/affiliation."

// २२ //

मिस रौनित कौर विरुद्ध ख्रिस्तीयन मेडीकल कॉलेज, लुधियाना , अे.आय.आर.१९९८ पंजाब, हिरयाणा-१ या याचिकेत सुध्दा पंजाब हनियाणा या मा. उच्च न्यायालयाच्या पांच न्यायमूर्तींच्या पुर्ण पीठाने परिच्छेद १४ व १५ मध्ये तसेच परिच्छेद ३५ मध्ये खाजगी शिक्षण संस्थांच्या संदर्भामध्ये अभिमत व्यक्त केले आहे, ते खालीलप्रमाणे आहे.

१४. In the present case, the respondent college is affiliated to the Punjab University. It is obliged to comply with the regulations and the rules framed by the appropriate authority under rules framed by the appropriate authority under the provisions of the Punjab University Act, १९४७. The constitution of the governing body the minimum qualifications which a member of the teaching staff has to possess, the conditions of eligibility for admission to the course of study are regulated by the provisions made by the University. A Committee appointed by the University is entitled to inspect the college. It is reported that certain provisions have not been complied with, action can be taken against the Institution. In case of violation of the regulations or the rules, the University can refuse to accept the students for the University Examination. It can debar the members of the teaching staff from being appointed as examiners etc. or from seeking election to a University

// २३ //

body or even continuing thereon. The College is bound to comply with the rules framed by the University in respect of " the conditions of service and conduct of teachers." The University also prescribed the academic qualifications and teaching experience etc. for appointment to the teaching posts in the Institution.

१५. A combined reading of the provisions of the Indian Medical Council Act, १९५६, the Punjab University Act, १९४७ and the regulations/rules framed thereunder indicates a significant degree of control over the Institution by the Central Government, the Medical Council of India and the University. This control is virtually all pervasive. Every field of activity viz. the course of study, the recruitment of the staff, the facilities for providing education and training and even the conditions of service of the members of the staff are regulated".

तसेच डीअेव्ही कॉलेज ट्रस्ट व मॅनेजमेंट सोसायटी व इतर विरुध्द डायरेक्टर ऑफ पब्लिक इन्स्ट्रक्शन या याचिकेमध्ये पंजाब व हरियाणाच्या मा. उच्च न्यायालयाचा निर्णय ( AIR २००८ Punjab & Hariyana ११७) खालीलप्रमाणे आहे.

"६. There is another aspect of the matter in another context, a Five-Judges Full Bench of this Court in the case of Ravneet Kaur vs. The

// २४ //

Christian medical College, Ludhiana, AIR १९९८ Punjab and Haryana १ has considered the question as to whether the functions discharged by a private body like Dayanand Medical College, Ludhiana or Christian Medical College, Ludhiana are public functions or private functions. The Full Bench has taken a view that since the institutions discharge public functions, it cannot be regarded as a private individual limiting the powers of the Court in issuance of directions including prerogative writs. It has further been held that imparting of education is a public function irrespective of any financial aid and once the institutions like the petitioners are performing public functions affecting the life of a huge segment of the society and in addition are receiving substantial grant in aid then it cannot be argued that it is not a public authority. Therefore, for the additional reason, detailed in Ravneet Kaur's case (supra), the writ petition would not survive and the question posed has to be answered against the petitioners."

वरील सर्व निर्णयांचा व अधिनियमांच्या तरतुदींच्या नियंत्रणाचा एकत्रित विचार केल्यास निश्चितपणे खाजगी विना अनुदानित शैक्षणिक महाविद्यालय सुध्दा शासनाचे शिक्षण प्रदान करण्याचे सार्वजनिक कर्तव्य करीत असल्याने सार्वजनिक (प्राधिकरण) संस्था (Public Body)



// २५ //

आहे. व त्यामुळेच त्यांच्यावर कायद्याचे नियंत्रण आहे. व प्रसंगानुरूप कारवाई करण्याचे अधिकार आहेत. पण माहितीचा अधिकार अधिनियम, २००५ हा अधिनियम अशा खाजगी विना अनुदानित शैक्षणिक महाविद्यालयास लागू होतो काय? हे अधिनियमाचे कलम २(J ) मधील "Public Authority" च्या मधील निकषांशी तपासून पाहिले पाहिजे. "

उपरोक्त व्याख्येतील " constituted" आणि " established" या शब्दांचा वैधानिक अर्थाचा विचार करणे आवश्यक आहे.

"The word "Constituted" does not necessarily mean "created" or "set up" though it may mean that also. It also includes the idea of clothing the agreement in legal form. The word in its wider significance, word include both the idea of creating or establishing and the idea giving a legal form to, a partnership/giving legal shape".

(M/s R.C. Mitter and son v/s Commission of Income Tax, AIR १९५९ SC ८६८.)

In the Oxford English Dictionary, vol. II at page ८७५ and ८७६, the word "constitute" is said to mean inter alias "to set up", establish, found and institution, etc. and also "to give legal or official form or shape to (an assembly etc.)" The word "establish" in shorter Oxford English Dictionary (Third Edition) the word establish has given number or

// ၃၆ //

meanings i.e. to render stable or firm, to satisfy, to confirm, settle to restore permanently; to affix, settle institute or ordain permanently; to set up on a secure basis, to found, to set up or bring about permanently.

Webster's Third New International Dictionary, the word 'establish' has been given number of meanings; namely to found, or base squarely to make firm or stable or to bring into existence, create, make short, originate.

In Bouviers Law Dictionary (Third Edition) volume I the word 'establish' has been given the following meanings, namely; to regulate, to recognize, confirm, admit etc. While considering this wanchoo, CJ, in case of Azeez Basha Vr. Union of India (A.I.R.၁၅၅၄၂ S.C. ၅၅၃) as observed as follows:

" We are of the opinion that for the purpose of Article ၃၀ (၁) of the constitution of India, the word (establish not supplied) means " to bring into existence" and so the right given by Article ၃၀(၁) to minority as to bring into existence and educational institution and if they do so, to administer it.

// २७ //

In view of these two words if the procedure for establishment of any educational institution is to be perused, i.e. if any body has to establish an educational institution, that body has to registered itself under the Societies Registration Act, १८६०, then according to purpose, i.e. education, it has to again registered itself under section १८ of the Bombay Public Trust Act, १९५०, as a Public Trust. However, " Trust cannot be deemed to be registered on the date of application but registration takes effect on passing of order "(Chatrapati Charitable Deosthan Trusts V/s Parisa Appa Bhosale & others. १९७ of Mah. L.J. १६३ : AIR १९७९ Bom. २१८) i.e. Trusts come into existence after passing the order by the competent authority.

The registered Institution under Societies Registration Act and Bombay Public Trust Act the institution is given legal official form or shape to (an assembly, etc.)" i.e. covered by the word " constituted " and establish means to bring into existence a competent/recognized institution or body for affiliation under the provision of the Universities Act to regulate under the, University Grant Commission Act and respectively A.I.C.T.E. Act (and M.C.I. Act) then the Institution known as

// २८ //

Educational Institution is established which is imparting education which is obligatory duty of the State under Constitution of India, performing the function of the State, may not be instrumentality or agency of state, but performing public duty or function which can be very well termed as "Public Authority" under the Right to Information Act, २००५ the object of which to provide transparency and accountability in the working of every "public authority". After establishing educational institution whether it is aided or unaided, in respect of college, the affiliation under section of the Maharashtra Universities Act will have to be obtained and in respect of professional courses the approval of All India Institute for Technical Education Act or Medical Council Act, १९५६ respectively be obtained after fulfilling the standard criteria prescribed under the Act and section २३ and २४ of the University Grants Commission Act provides that no educational institution except a University can award degrees.

Amongst of all the above mentioned Acts, the Bombay Public Trust Act, १९५० and Maharashtra Universities Act, १९८४ are the Acts made by State Legislature, Societies Registration Act, १८६० is a central Act, the All India Council for Technical Education Act, १९८७ (Medical

// २९ //

Council Act, १९५६), the University Grant Commission Act, १९५२ are the Acts made by Parliament.

Their Lordships observed Unni Krishnan on Para ६८८ that it is not merely an establishment of educational institution, that is urged by the petitioners, but to run the educational institution dependant on recognition by the state; There is absolutely no fundamental right to recognition in any citizen. The right to establishment and run the educational institution with states recognition arises only on the state permitting, pursuant to a policy decision or as the fulfillment of the conditions of the statute.

८५. It could be concluded that the private colleges are the felt necessities of time that does not mean one should tolerate the " so called colleges "run in thatched huts with hardly any equipment, with no or emprise laboratories, scarce facility to learn in as unhealthy atmosphere, far from conducive to education. Such of them must be put down ruthlessly with an iron hand irrespective of who has started the institution or who desires to set up such an institution."

८८. Regulatory measures must so ensure that private educational institutions maintain minimum standards and facilities It can not be again said that profiteering is an evil. If a public utility like electricity could be controlled, carpingly, the professional colleges also required to be regulated.

तसेच अधिनियमाचे कलम २ (च) मध्ये " माहिती " या संज्ञेची व्याख्या दिलेली आहे. " माहिती " याचा अर्थ, कोणत्याही स्वरूपातील कोणतेही साहित्य असा असून त्यामध्ये अभिलेख, दस्तऐवज, टिपणी इ. आणि त्या त्या वेळी अंमलात असलेल्या कोणत्याही अन्य कायद्यान्वये सार्वजनिक प्राधिकरणास मिळविता येईल अशी, कोणत्याही खाजगी निकायाशी संबंधित माहिती यांचा समावेश होतो. ". यावरून खाजगी निकायावर नियंत्रण असेल तर त्यांचेकडून माहिती उपलब्ध करून घेता येते.

विना अनुदानित खाजगी महाविद्यालय- मुंबई सार्वजनिक विश्वस्त अधिनियमाच्या तरतुदीप्रमाणे धर्मदाय आयुक्त यांचे संपूर्ण नियंत्रण शिक्षण संस्थेवर असते. महाराष्ट्र विद्यापीठ अधिनियमाप्रमाणे विद्यार्थ्यांच्या पदवी अभ्यासक्रमाबाबत नियंत्रण असते. All India Council of Technical Education च्या तरतुदीप्रमाणे निकष नसतील तर मान्यता काढून घेता येते. University Grant Commission कायद्याप्रमाणे नियंत्रण असते व स्पष्टीकरण मागता येते.

// ३१ //

वरील सर्व प्राधिकरणे ही सार्वजनिक प्राधिकरणे आहेत व नियंत्रित खाजगी निकायाकडून माहिती उपलब्ध करून घेता येते. याचा अर्थ, Right to Information Act मध्ये नियंत्रित खाजगी निकायांचा सुध्दा समावेश होतो.

In view of the regulatory provisions of all the relevant Acts, and the observations made by Hon. Supreme Court and Hon. High Court, the well settled rule of construction that to ascertain the legislative intent, all the construction part of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purposes and object of the Act itself. The title and preamble whatever their value might be as aids to the constitution of a statute, undoubtedly throw light on to intent and design of the Legislature and indicate the scope and purpose of the Legislation itself (AIR१९५३ SC २७४), may be applied while interpreting the destination of the form " Public Authority."

उत्तरवादी संस्थेतर्फे अॅडव्होकेट श्री डी.एन. माथूर यांनी उत्तरवादी ही संस्था Public Authority च्या व्याख्येत येत नाही असा युक्तिवाद करतांना करून उपरोक्त खुलासा दाखल केला आहे त्याबाबत विचार केला असता-

Even if the it appears that definition is restrictive and exhaustive in nature, but as above pointed out that in the meaning of words

// ३२ //

"Constituted" and "established" that the institution/college is regulated or given legal shape or controlled by the Acts of State Legislature or Acts of Parliament. it is therefore, not necessary at all to add more enumerations in the definition.

He contend that the rule of ejusdem genesis is not applicable.

The rule ejusdem genesis means "of the same kind" Although the educational institutions receiving grant from Government and the institutions which are not receiving grant by nature are same but not analogous, more over of it is not necessary to apply the ejusdem genesis rule i.e. "not to the same kind" rule and it is also not necessary as to supply to "casus omissus". The non-aided educational institutions itself covered within the meaning of the words "constituted and established", as discussed above as those institutions are constituted (regulate, given legal shape etc.) established under the Societies Registration Act; Bombay Public Trust Act, १९५०, Maharashtra Universities Act, University Grants Commission Act, All India Institution of Technical Education Act.etc, which are either laws made by Parliament or State Legislature. तसेच महाराष्ट्रातील खाजगी विनाअनुदानित शिक्षण संस्थांना



// ३३ //

महाराष्ट्र खाजगी व्यावसायिक शिक्षण संस्था (अनुसूचित जाती, अनुसूचित जमाती, निरधिसूचित जमाती (विमुक्त जाती), भटक्या जमाती आणि इतर मागास वर्ग यांना प्रवेश देण्यासाठी जागांचे आरक्षण ,अधिनियम २००६ (सन २००६ चा महाराष्ट्र अधिनियम क्रमांक ३०) M.S.Higher Educational Institutes (Prohibition of Capitation Fees) Act, १९८७ (Mah. VI of १९८८) हे महाराष्ट्र विधान मंडळाने पारित केलेले अधिनियम सुध्दा लागू आहेत.

Once the institute covers under the definition of the "Public Authority", the employees of the institutions are also covered under the R.T.I. Act त्याकरीता उन्नीकृष्णन या निकालातील परिच्छेद ७८ मध्ये आंदी मुक्त सदगुरु श्री मुखर्जी वनदास स्वामी सुवर्ण जयंती महोत्सव स्मारक ट्रस्ट डि.व्ही.आर. सदानी (१९८९) २ S C C ६९१ मधील निर्णयाचा उल्लेख असून सदर निर्णयात परिच्छेद १५ मध्ये-

१५. The educational institutions discharge public function by way of imparting education to students. They are subject to rules and regulations of the affiliating university. Their activities are closely supervised by the University Authorities. Employment in such institutions, therefore, is not devoid of any public character (The Evolving Indian Administratative Law by M.P. Jain (१९८३) P-२२६). So are the service conditions of the academic staff when the university takes a decision regarding their pay scales, it will be binding on the management. The

service conditions of the academic staff are, therefore, no purely of a private character. It has super-added protection by university decisions creating a legal right-duly relationship between the staff and the management."

Although it is observed in respect of aided colleges it is applicable to non-aided colleges/institutions and, therefore, their information cannot be called as a personal information for which shelter of section ८ (१) cannot be taken.

उत्तरवादीच्या वकीलांनी केंद्रीय माहिती आयोगाने Board of Control for Cricket for India (BCCI) या संस्थेस R.T.I. लागू होत नाही याबद्दलचा निर्णय दाखला म्हणून दाखल केला आहे. निर्णय बरोबर आहे कारण BCCI हया संस्थेचा उद्देश public function "सार्वजनिक कर्तव्य" नाही. व त्यामुळे शिक्षण संस्थेबरोबर BCCI ची तुलना होऊ शकत नसल्याने तो दाखला (precedent) लागू होत नाही. तसेच केंद्रीय आयोगाचा निर्णय हा राज्य माहिती आयोगावर बंधनकारक नाही.

वरील सर्व विवेचनावरून कै. यशवंतराव चव्हाण अभियांत्रिकी महाविद्यालय संस्था हे माहितीचा अधिकार अधिनियम २००५ च्या कलम २ (ज) मध्ये दिलेल्या "सार्वजनिक प्राधिकरण" या संज्ञेच्या व्याख्येप्रमाणे "सार्वजनिक प्राधिकरण" होत असल्याने सदर महाविद्यालयाने जन

// ३५ //

माहिती अधिकारी व प्रथम अपीलिय अधिकारी यांची नियुक्ती करुन अपीलकर्ता यांनी मागितलेली माहिती उपलब्ध करुन देणे संयुक्तिक राहिल.

### आदेश

- १) अपीलकर्ता यांचे अपील हे अंशतः मंजूर करण्यात येत असून यशवंतराव चव्हाण अभियांत्रिकी महाविद्यालय खाजगी विना अनुदानित संस्थेस माहितीचा अधिकार अधिनियम, २००५ लागू आहे.
- २) उपरोक्त शासकिय संस्थेने अधिनियमाच्या कलम ५ प्रमाणे जन माहिती अधिकारी व कलम १९ (१) प्रमाणे प्रथम अपीलिय अधिकारी यांची नियुक्ती करावी.
- ३) अपीलकर्ता यांना त्यांच्या दिनांक १४.३.२००७ च्या अर्जाप्रमाणे नियुक्त केलेल्या जन माहिती अधिकारी यांनी हा निर्णय मिळाल्यापासून ३० दिवसांचे आंत मागितलेल्या माहितीच्या उपलब्ध असलेल्या कागदपत्रांच्या/अभिलेख्यांच्या/दस्तऐवजांच्या छायांकित प्रती विनामुल्य उपलब्ध करुन व्यक्तिशः देण्यात याव्यात.
- ४) अपीलकर्ता यांनी सदरची माहिती व्यक्तीशः उपलब्ध करुन घेणार असे नमूद केलेले असल्यामुळे हा निर्णय मिळाल्यापासून २० दिवसानंतर मात्र ३० दिवसांचे आंत जन माहिती अधिकारी यांच्याशी व्यक्तीशः संपर्क साधून सदरची माहिती व्यक्तीशः उपलब्ध करुन घेण्यात यावी. व तशी पोच जन माहिती अधिकारी यांचेकडे देण्यात यावी.
- ५) अपीलकर्ता व उत्तरवादी यांना निर्णयाची एक प्रत देण्यात यावी.

दिनांक :- १.९.२००८

(विलास पाटील)  
राज्य माहिती आयुक्त,  
राज्य माहिती आयोग, विदर्भ क्षेत्र, नागपूर