



माहितीचा
अधिकार

तात्काळ

माहितीचा अधिकार

महाराष्ट्र शासन

क्र. ०६-०८/माअअ/Online /२१/'अ' शाखा
विधि व न्याय विभाग,
५ वा मजला, मुख्य इमारत,
हुतात्मा राजगुरु चौक, मादाम कामा मार्ग,
मंत्रालय, मुंबई- ४०० ०३२.
दुरध्वनी क्र. ०२२ २२०२५३३४
दिनांक :- ०८/०९/२०२१.

प्रति,


✓ Shri.Chirag Dave,
52, Jolly Maker II, 225,
Nariman Point,
Mumbai- 400 021

विषय:- माहितीचा अधिकार अधिनियम, २००५ अंतर्गत आपला दि.०६.०८.२०२१
रोजीचा ऑनलाईन अर्ज.

महोदय,

उपरोक्त विषयास अनुसरून आपणास कळविण्यात येते की, विधि व न्याय विभागाचे पत्रानुसार माहितीच्या खर्चास्तव आपण Maha-Online द्वारे जमा केलेल्या रुपये २६ /- चे प्रदानाची पावती या विभागास ईमेलद्वारे प्राप्त झाली. आपण मागितलेल्या माहितीस अनुसरून अभिप्रायाचे एकूण ०८ पृष्ठ आपणास यासोबत माहिती अधिकार अधिनियम, २००५ च्या कलम ७ (१) मधील तरतुदीनुसार उपलब्ध करून देण्यात येत आहे.

२. उक्त माहितीने आपले समाधान न झाल्यास आपण माहितीचा अधिकार अधिनियम, २००५ अंतर्गत विहित मुदतीत श्री. र. म. जाधव, अवर सचिव तथा प्रथम अपिलीय अधिकारी, विधि व न्याय विभाग, "अ" शाखा, ५ वा मजला, मुख्य इमारत, हुतात्मा राजगुरु चौक, मादाम कामा मार्ग, मंत्रालय, मुंबई -४०० ०३२ यांच्याकडे हे पत्र प्राप्त झाल्यापासून ३० दिवसांच्या आत प्रथम अपील सादर करू शकता.


8/9/2021

(सचिन द. कस्तुरे)

जन माहिती अधिकारी तथा अधिक्षक (विधि)

Recd-
14/9/21
12:25pm

This is a reference by the Medical Education and Drug Department wherein certain queries are raised in respect of Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admission and Fees) Act, 2005 (Hereinafter referred to as the "Said Act") and its applicability to the College of Physicians and Surgeons (CPS).

2. Facts , Necessary for the perusal of reference are as under:-

College of Physicians and Surgeons (CPS) ,Mumbai is an institute engaged in imparting medical education. Previously a query was raised by the department that in view of the Repealing and Amending Act, 2016 ,rights of CPS to confer degrees etc. are extinguished, as , according to the department, CPS was having such powers by virtue of Medical Degrees Act, 1916. This department has clarified as under-

"The rights of CPS in respect of imparting medical education and awarding Diplomas/fellowships recognized under the Indian Medical Council Act, 1956 is still in existence and can not be extinguished"

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3. Meanwhile it is clarified by the concerned department that CPS Courses are

not declared as Professional Courses , so also rules for Admissions to it's courses are also not yet notified. On this backdrop, the issue, as titled, relates to the

admissions for various courses of CPS and regularisation of Fee structure. But department has sought opinion of Law and Judiciary Department on the

assumptions expressed in its note at page No.15, 16/n.s.

Assumption No. 1 That the CPS courses are within the purview of the said Act as CPS is doing university like activities and secondly that its courses are approved by the appropriate authority :-

4. At the outset, it is apt to note that as per the Statement of Objects and Reasons declared on 7th April, 2014, in respect of Said Act speaks to regulate the admission process and charging of fees by the unaided Private Professional Education Institutions. Accordingly, Article No.2 of the said Statement reads as under :

“2. The Bill accordingly proposes to establish two Authorities for regulating the admissions and fees in unaided Private Professional Education Institution and conduct of Common Entrance Test through Centralized Admission Process.”

5. Section 2(q) defines “Private Professional Education Institution as under” :

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(q) “Private Professional Educational Institution” means any college, school, institute, institution or other body, by whatever name called, conducting any professional course or courses approved or recognized by the appropriate authority and affiliated to any university, but shall not include,—

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(i) any such institution established, maintained or administered by the Central Government, any State Government or any local authority;

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- (ii) institution declared to be a deemed university under section 3 of the University Grants Commission Act, 1956 ; or
- (iii) a university to which the provisions of the University Grants Commission (Establishment and Maintenance of Private Universities) Regulations, 2003 are applicable;

6. The above definition will show that two conditions needs to be fulfilled (a) that the courses should be approved by the appropriate authority and (b) the institution should be affiliated to any University. The Department has clarified that the courses are approved by the appropriate authority.

7. Also it does not seems that CPS is affiliated to any University. It is only mentioned that the institution is conducting *University like activities*.

Sec. (2)(y) of the Said Act defines "University".

(y) "University" shall have the same meaning as assigned to it in clause (f) of section 2 of the University Grants Commission Act, 1956.

8. As per the University Grants Commission Act, 1956 CHAPTER I, Sec. 2 ..

(f) ""University" means a University established or incorporated

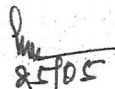
by or under a Central Act, a Provincial Act or a State Act, and

includes any such institution as may, in consultation with the

University concerned, be recognised by the Commission in

accordance with the regulations made in this behalf under this

Act."



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9. Therefore, it is not merely sufficient that the institution should conduct University like activities. It should be affiliated to the University. In all CPS does not appears to be affiliated to any University as such and hence, CPS or it's courses are not within the purview of the Said Act. Accordingly assumption of the department is incorrect.

Assumption No. 2 :- That the approved and distinct courses of CPS can be declared as professional courses under the said Act.

10. Section 2(r) of the said Act defines professional education. It runs as under :

“(r) “Professional Education” means any educational course of study declared and notified as such, from time to time by the Government which includes a course leading to the award of an Under Graduate or Post-Graduate degree, diploma, by whatever name

called and recognized by the appropriate authority;” **ही माहिती माहितीचा अधिकार अधिनियम, २००५ अन्वये उपलब्ध करून देण्यात आलेली आहे.”**

11. It is to be noted that there is no provision to declare/notified courses of any specific institution. Therefore, it is not proper to say that distinct courses of CPS as

assumed by the Department can be notified as professional courses. It is mentioned in the note para (9) of the department that some courses are approved

by the State Government. Thus it appears that one of the conditions is fulfilled.

Therefore, if another condition is fulfilled then only the assumption of the department can be substantiated.

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Assumption No. 3:- That the Unaided Private Professional Educational Institutions which are conducting CPS courses comes within the purview of section 2(q) of the said Act as Private Profession Education Institution.

12. Section 2(q) of the said Act which defines "Private Professional Educational Institution" is reproduced above. It is also explained in the opinion to assumption No. 1 that CPS is not affiliated to University. Hence the institutions, conducting its courses are not within the purview of Sec. 2 (q) of the Said Act.

Assumption No. 4:- That the admission process of CPS courses can be conducted through CET established under the said Act.

13. It is to be noted that once its courses or the institution does not comes within the respective definition of the Said Act , then obviously Sec. (4) of the Said Act, related to the admission process can not be made applicable thereto. Hence this assumption is incorrect.

Assumption No. 5:- That the Institute wherein CPS courses are conducted, fees of such institute can be regularized through regulatory authority established under the said Act.

14. It is to be noted that "CPS courses" is neither defined nor clarified in the said Act. Regularization of fees and its like activities are clarified in Chapter 4 of the said Act. The authority shall determine the reasonability of the fee structure

proposed by every unaided institution, in respect of each professional courses or group of courses. CPS does not comes within the purview of the Said Act.

Therefore, it is difficult to presume and assume that only on the basis of CPS courses the particular institution will come within the purview of this Act for the purpose of fee structure.

Assumption No.6 : While conducting admission process of CPS courses in Government and Private institute, reservation can be applied as per the State policy.

15. Section 6 of the Said Act deals with the provision of reservation in seats. Relevant portion is as under:-

"6. (1) The allocation of seats under different categories in an un-aided institution, not being a Minority Educational Institution, shall be in accordance with the Maharashtra Private Professional Educational Institutions (Reservation of seats for admission for Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes and Other Backward Classes) Act, 2006 and as per the Government policy declared from time to time, including the NRI quota.

(2) XXXX"; "

16. Unaided Institution is defined in Sub- section (x) of Sec. 2 of the Said Act, which is as under:-

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(x) "unaided institution" means **Private Professional Educational Institution**, which is not receiving aid or grant-in-aid from the Central Government, the State Government or the local authority;"

17. Above two provisions will show that Sec. (6) of the Said Act, that is to say, the reservation policy of the State in admissions will apply only if the institutions comes within the purview of Sec. 2(q) as "**Private Professional Educational**

Institution". It is already clarified that the CPS does not comes within the purview of this definition. Hence provisions of Sec. 6 and accordingly, reservation policy of the Sate can not be made applicable to CPS by virtue of the Said Act. Therefore this assumption is incorrect.

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18. At this juncture it will be apt to note that CPS courses are professional courses. The Said Act is enacted on the basis of directions given by the Hon'ble Supreme Court various cases. This is apparent in the Statement of Objects and Reasons of the Said Act. Relevant portion is as under-

"The issue of regulation of admission and fees in relation to various professional educational courses is an important one. In view of the decisions of the Supreme Court in T.M.A.Pai Foundation and others v. State of Karnataka (Writ Petition (civil) No. 317 of 1993, decided on 31st October 2002), Islamic Academy of Education and Another v. State of Karnataka and Others (Writ Petition (civil) No. 350 of 1993, decided on 14th August 1993) and P.A .Inamdar and Others v. State of Maharashtra and Others (Writ Petition (civil) No. 5041 of 2005, decided on 12th August 2005), it is necessary to regulate the admission process and charging of fees by the unaided Private Professional Education Institutions. Accordingly, the State Government...."

underline supplied.

19. Relevant observation in **P.A. Inamdar's** case can be useful at this juncture.

These are reproduced below:-

"(1) To what extent the State can regulate the admissions made by unaided (minority or nonminority) educational institutions? Can the State enforce its policy of reservation and/or appropriate to itself any quota in admissions to such institutions?"

Nowhere in Pai Foundation, either in the majority or in the minority opinion, have we found any justification for imposing seat sharing quota by the State on unaided private professional educational institutions and reservation policy of the State or State quota seats or management seats.(pg. 41)

Our answer to the first question is that neither the policy of reservation can be enforced by the State nor any quota or percentage

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of admissions can be carved out to be appropriated by the State in a minority or non-minority unaided educational institution." (Pg. 42)"

20. The query is answered as above.

21. With these remarks, this reference is returned to the concern Department.

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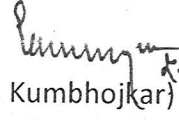
Secretary and S.L.A. (Shri Deshmukh) has seen and approved the above view.


8/9/2021

जन माहिती अधिकारी

कार्य/सम/शाखा अ विधि व नाय विभाग,

U.O.R. to Medical Education and Drug Department - शि-२


25/05/2021


(Pravin A. Kumbhojkar)

Deputy Legal Advisor-cum-Deputy Secretary
Law and Judiciary Department

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No.46/246/67 hand/Civil/Confl/2021/'A' Br., Dated 25th May, 2021.

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