
(2016) 08 MP CK 0026
In the Madhya Pradesh High Court
Case No : W.P. No. 12453 Of 2015

Adhar Ram Raj Mishra Shiksha Evam Swasthya Samiti	APPELLANT
Vs	
National Council for Teacher Education	RESPONDENT

Date of Decision : 23-08-2016

Acts Referred:

Citation : (2017) 1 MPLJ 102

Hon'ble Judges : Mr. S.K. Gangele and Ashok Kumar Joshi, JJ.

Bench : Division Bench

Advocate : Shri Harpreet Ruprah Advocate, for the Respondents Nos. 3 and 4;
Shri K.K. Singh Advocate, for the Respondents Nos. 1 and 2; Shri Siddharth Gupta Advocate, for the Petitioner

Final Decision : Allowed

Judgement

S.K. Gangele J. :- The petitioner is a society registered under the provisions of M.P. Society Registrikaran Adhiniyam, 1973 (hereinafter called "the Act of 1973"). The Society submitted an online application to the respondent no. 2 for grant of recognition to conduct D.P.S.E. Course for the academic session 2016-17. As per the petitioner it had completed all the formalities. The petitioner also applied with the respondents no. 3 and 4 for grant of NOC for the aforesaid purpose. The respondent no. 3 rejected the application of the petitioner on the ground that there were five centers already in existence in District Sidhi who have been imparting D. El.Ed. Course. Because no objection certificate is refused by the respondents no. 3 and 4, hence, the respondent no. 1 and 2 also rejected the application of the petitioner for recognition.

2. Respondents no. 3 and 4 in their reply to the writ petition pleaded that the application of the petitioner for grant of NOC was rejected on the ground that after inspection conducted by the respondents it was found that the construction of building as proposed by the petitioner was under construction, hence, no objection certificate could not be granted to the petitioner.

3. The respondents no. 1 and 2 in their return pleaded that because the petitioner did not produce the no objection certificate, hence the application of the petitioner for grant of recognition could not be considered in view of the clause 5/3 of the notification dated 28/11/2014 by them.

4. In the present case, the respondents no. 3 and 4 in the return pleaded that the application of the petitioner for grant of no objection was rejected on the ground that on inspection, it was found that the building which was proposed by the petitioner for the purpose of conducting course was under construction, hence the petitioner did not had proper building, consequently, the petitioner was not eligible for grant of NOC.

5. It is an admitted fact that the power of the recognition to conduct the course for which petitioner submitted the application is with the respondents no. 1 and 2. For the purpose of grant of recognition statutory rules have been framed and the respondent no. 1 have to conduct inspection and find out that whether the institution fulfils conditions for grant of recognition or not. Respondents no. 3 and 4 are the examining authority, no objection certificate from the respondent Board of Secondary Education, Bhopal is required so the student can appear in the examination which would be conducted by the Board.

6. The Apex Court in the case of Rungta Engineering College, Bhilai and another v. Chhattisgarh Swami Vivek Anand Technical University and another reported in (2015) 11 SCC 291 has held as under in regard to power of examining authority:-

"27.The question of the authority of a University to grant or decline affiliation squarely fell for consideration before this Court in Bhartia Education Society v. State of H.P., (2011) 4 SCC 527. The case arose under the National Council for Teachers Education Act, 1993 (hereinafter referred to as "NCTE Act") the scheme of which is also identical to the AICTE Act. This Court held as follows:-

19. ? On the other hand, "recognition" is the licence to the institution to offer a course or training in teacher education. Prior to the NCTE Act, in the absence of an apex body to plan and coordinate maintenance of the norms and standards in the teacher education system, Government and universities/boards. After the enactment of the NCTE Act, the functions of NCTE as "recognising authority" and the examining bodies as "affiliating authorities" became crystallised, though their functions overlap on several issues. The NCTE Act recognises the role of examining bodies in their sphere of activity.

28. This Court examined the scope of Section 16 of the NCTE Act which prohibited the grant of affiliation by any "examining body" - (a University) to any institution conducting a course for training people for the occupation of teaching unless such institution obtained recognition from the competent authority under the NCTE Act. Though, this Court made it clear that the "examining body" (University) does not have any discretion to refuse affiliation with reference to any of the factors which ought to be considered by NCTE while granting recognition, recognised that the "examining body" has the authority to

demand compliance with its norms in a limited area regarding the "eligibility of the candidates" and "manner of admission" of students etc. It was further held :-

"22. ? For example, NCTE is required to satisfy itself about the adequate financial resources, accommodation, library, qualified staff, and laboratory required for proper functioning of an institution for a course or training in teacher education. Therefore, when recognition is granted by NCTE, it is implied that NCTE has satisfied itself on those aspects. Consequently, the examining body may not refuse affiliation on the ground that the institution does not have adequate financial resources, accommodation, library, qualified staff, or laboratory required for proper functioning of the institution. But this does not mean that the examining body cannot require compliance with its own requirements in regard to eligibility of candidates for admissions to courses or manner of admission of students or other areas falling within the sphere of the State Government and/or the examining body." At para 24, this Court indicated the areas where the "examining body" can stipulate norms, the noncompliance with which norms authorise the examining body to cancel the affiliation.

"24. The examining body can therefore impose its own requirements in regard to eligibility of students for admission to a course in addition to those prescribed by NCTE. The State Government and the examining body may also regulate the manner of admissions. As a consequence, if there is any irregularity in admissions or violation of the eligibility criteria prescribed by the examining body or any irregularity with reference to any of the matters regulated and governed by the examining body, the examining body may cancel the affiliation irrespective of the fact that the institution continues to enjoy the recognition of NCTE. Sub-section (6) of Section 14 cannot be interpreted in a manner so as to make the process of affiliation, an automatic rubber-stamping consequent upon recognition, without any kind of discretion in the examining body to examine whether the institution deserves affiliation or not, independent of the recognition."

29. Similarly, under the scheme of the 1987 Act, as noticed by this Court in para 30 of the Adhiyaman Educational & Research Institute case (supra), under Section 10 of the Central Act, the Council is entrusted with the power to lay down norms and standards for courses, curricula, staff pattern, staff qualification, assessment and examination, fixing norms and guidelines for charging tuition fees etc. and further held that in these matters the University will have no authority.

30. The respondents heavily relied upon the last sentence of para 24 of the decision in Bhartia Education Society (supra) (extracted earlier) to assert that the respondents still have the necessary authority to grant or decline affiliation. We are of the opinion that the respondents are reading that sentence out of the context. The judgment was very clear as to the areas which are exclusively within the jurisdiction of the NCTE whose satisfaction regarding the compliance with the standards prescribed by it in those areas is final and the areas where

the "examining body" has authority to lay down its own norms (such as eligibility of the students for admission to a course and the manner of admission).

31. We apply the principles of law mentioned above to the facts of the present case. The various objections which (according to the respondent) formed the basis for declining affiliation to the first petitioner institution are contained in the communication dated 26.4.2013 which was extracted in detail at para 26 (supra).

32. An examination of all the objections mentioned in the said communication would reveal that each one of those objections squarely fall within the sweep of one or the other areas which only the AICTE has the exclusive jurisdiction to deal with. None of them are demonstrated before us to be matters falling within the area legally falling within the domain of the respondents. AICTE, on inspection of the 1st petitioner college reported that the 1st petitioner college fulfils all the conditions prescribed by the norms and standards laid down by AICTE. The respondents did not make any specific assertion that such a report of the AICTE is factually incorrect. Assuming for the sake of argument that, in the opinion of the respondents, the petitioner college has not in fact fulfilled any one of the conditions required under the norms specified by the AICTE, the only course of action available for the respondents is to bring the shortcomings noticed by them to the notice of the AICTE and seek appropriate action against the petitioner college.[6]

33. We are, therefore, of the opinion that the decision of the respondent not to grant the affiliation to the first petitioner college is wholly untenable and is required to be set aside. The same is accordingly set aside. Since the respondent did not decline the affiliation to the first petitioner college either on the ground that the petitioner college is admitting wholly ineligible students as per the norms stipulated by the respondent University or that the admission procedure prescribed by the respondents is not being complied with by the petitioners or on any other ground that the petitioners violated any one of the stipulations made by the University which the University is legally competent to make, we have no option but to direct the respondents to grant affiliation to the petitioner college. The operative portion of the judgment of this Court has already been pronounced on 01.9.2014. Therefore, we are not reiterating the same."

7. The Apex court has clearly held that the examining body has limited power in regard to affiliation or grant of no objection certificate. It cannot encroach upon the power which is with the institution who was granted recognition.

8. In the present case the power of grant of recognition is with the respondent no. 1 and it has power to make inspection in regard to fact that the institution has building or not for the purpose of conducting the course that power is not with the Board which is an examining body. Hence, the order passed by the Board in regard to refusal to grant no objection certificate and consequently the order passed by the respondents no. 1 and 2 who rejected the application of the petitioner for grant of recognition are contrary to law.

9. Consequently, the petition is disposed of with the following directions:-

The impugned order passed by the respondent no. 3 Board dated 30/06/2015 Annexure R/3-1 is hereby quashed. The Board is directed to pass appropriate order on the application of the petitioner for grant of no objection certificate and thereafter the respondents no. 1 and 2 shall consider the application of the petitioner for grant of recognition treating the application for next academic session. Necessary orders be passed in this regard by the Board within a period of four weeks from the date of receipt of certified copy of this order. No order as to costs.

Certified copy as per rules.