

(2001) 12 BOM CK 0002

In the Bombay High Court

Case No : Writ Petition No. 3377 of 1999

Ambika Shikshan Sanstha and Another

APPELLANT

Vs

Vice Chancellor and Another

RESPONDENT

Date of Decision : 20-12-2001

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 14, 14(1), 14(5)

Citation : (2002) 3 BomCR 41

Hon'ble Judges : V.M. Kanade, J;H.L. Gokhale, J

Bench : Division Bench

Advocate : K.H. Deshpande, for the Appellant; B.G. Kulkarni and T. Khan for respondent No. 1 and C.S. Kaptan and Rakesh Johari, for the Respondent

Final Decision : Allowed

Judgement

H.L. Gokhale, J.—Heard Mr. Deshpande, learned Counsel, for the petitioners, Mr. Kulkarni along with Ms. Khan Advocate for respondent No. 1 and Mr. Kaptan along with Mr. Johari Advocate for respondent No. 2.

2. The first petitioner is an education society which is running the second petitioner-college. This college is established for imparting training to the teachers who become instructors in physical education. This institution has been running since 1993-94 and the courses available in this institution were recognised by the first respondent-University at all material time. This has been the position since 1993-94.

3. The National Council for Teacher Education Act (for short NCTE Act), 1993 came into force on 17-8-1995. That Act required the institutions offering course for teachers in physical education to obtain recognition from the National Council for Teacher Education (shortly known as NCTE). It is the case of the petitioners that accordingly they applied to the Western Regional Committee of NCTE (second respondent) initially on 6-7-1998 and subsequently on 20-7-1998 for recognition of the courses that they were to conduct during the year 1999-2000.

That application came to be rejected on 4-8-1999. On the decision of the second respondent, the first respondent informed the petitioners by their letter dated 7-8-1999 that for the year 1999-2000 their course was not recognized. That decision is challenged in this petition through prayer Clause (a) and interim order is also sought that the said decision be stayed.

4. It is material to note that this particular course was for the Bachelor's Degree in Physical Education known as B.P.Ed. As stated earlier, it was recognised by the first respondent University and the course run by the petitioners for the subsequent year has come to be recognised by the second respondent later on. The problem raised in this petition is only for one year of 1999-2000 wherein there were some 50 students.

5. When this petition came up for consideration for admission before the Division Bench on 22-2-2000, the Division Bench by a speaking order, after hearing the Counsel for the respondents, permitted the students concerned to appear in the annual examination which was conducted in June 2000. The order, however, directed that the result will not be announced. Thus, these students appeared for the examination in June 2000 and their results have not been declared. The petition was admitted but has not reached for final hearing thereafter and that is why it has been taken for hearing on urgent basis inasmuch as nearly 11/2 year has gone after the order was passed.

6. It is material to note that after the aforesaid rejection of 4-8-1999 the petitioners carried an appeal to the Appellate Authority under that statute and that appeal also came to be rejected. Being aggrieved by that decision, the petitioners filed Writ Petition No. 2872 of 2000. Some submissions with respect to the interpretation of the regulations were raised in this petition and they were subsequently included in the present petition by an amendment. Thereafter Writ Petition No. 2872 of 2000 was withdrawn.

7. A return has been filed by respondent No. 2 and the decision of the respondent No. 2 is sought to be maintained.

8. Mr. Deshpande, learned Counsel for the petitioners, submitted that as far as the NCTE Act is concerned, that Act deals with the teacher's education and the courses in different streams. He submits that u/s 14 of the Act, it is necessary to have a regulation to cover a particular course and then only the Act would apply to the course concerned. He submits that as far as physical education and the training therefore is concerned, the Regulations were framed in 1998. They are known as National Council for Teacher Education (Norms and Conditions for Recognition of Teacher Education Programme in Physical Education- C.P.Ed., B.P.Ed. and M.P.Ed.) Regulations, 1998. These Regulations were framed for the first time on 29-12-1998 and were Gazetted on 20-3-1999. Mr. Deshpande, therefore, submits that until these Regulations were framed there was no occasion for the petitioner-institution to be covered by the Act and these Regulations. The petitioner-institution had in any event applied for recognition of

its course in advance on 20-7-1998. But in any case, as far as the academic year 1999-2000 is concerned, the petitioner-institution had right to continue the particular course u/s 14(5) of the Act. The relevant section 14(1) and 14(5) reads as follows:

"14. Recognition of institutions offering course or training in teacher education.

(1) Every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may, for grant of recognition under this Act, make an application to the regional committee concerned in such form and in such manner as may be determined by Regulations:

Provided that an institution offering a course or training in teacher education immediately before the appointment day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the regional committee.

(2)

(3)

(4)

(5) Every institution, in respect of which recognition has been refused shall discontinue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under Clause (b) of sub-section (3)."

Mr. Deshpande submits that u/s 14(5) even if recognition is refused, the institution concerned is permitted to continue that course till the end of the academic session next following the date of receipt of the order refusing recognition. In the instant case, the order refusing recognition was issued on 4-8-1999 and that being the position, until the end of the particular academic year 1999-2000 the course could not be held to be invalid one. Mr. Deshpande relies upon a judgment of the Apex Court in the case of P. Kasilingam and others Vs. P.S.G. College of Technology and others, . Those were the appeals wherein a question arose as to whether a private engineering college is governed by the provisions of the Tamil Nadu Private Colleges (Regulation) Act, 1976 at a time when the Rules were not framed. The Apex Court in para 20 of the judgment specifically held that in the absence of the Rules the Act cannot be enforced. The Court observed as follows:

"Many of the provisions of the Act can be put into operation only after the relevant provision or form is prescribed in the Rules. In the absence of the Rules the Act cannot be enforced. If it is held that Rules do not apply to technical educational institutions the provisions of the Act cannot be enforced in respect of such institution."

That was also the view taken by Madras High Court and that was accepted in

appeals and the appeals were dismissed.

9. Mr. Kaptan, learned Counsel appearing for respondent No. 2, on the other hand, submits that it is the 1995 Regulations which are relevant for the purposes of making the application. These earlier regulations are known as the National Council for Teacher Education (Application for recognition, the manner for submission, determination of conditions for recognition of institutions and permission to start new course or training) Regulations, 1995. Mr. Kaptan draws support from the wording of section 14(1) of the Act, quoted above, and submits that it is the institution which has to apply within a particular period as prescribed thereunder. He opposes the submission of Mr. Deshpande that as far as the courses for physical training are concerned they were not required to apply when these Regulations came into force in 1995. He particularly laid emphasis on Regulation 12 of Regulations 1995, which is a general regulation and which read as under:

"12. Application for recognition of institutions offering a course or training in teacher education of innovation nature and or different in terms or course contention methodology, duration etc. shall be dealt by the regional committee concerned in such manner as may be determined by the Council either by general or special order."

Mr. Kaptan submits that these Regulations of 1995 were meant for all institutions for teacher education and if one did not have the recognition, the qualification obtained would not be valid qualification. He relies upon the judgment of Apex Court in *L. Muthukumar and Another Vs. The State of Tamil Nadu and Others*, wherein the Apex Court held that mere passing of the public examination is not enough and that it must be coupled with proper training in a recognised institution. Mr. Kaptan submits that this petition need not be further proceeded in view of withdrawal of the earlier petition, i.e. Writ Petition No. 2872 of 2000. He relied upon the judgment of Apex Court in *Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others*, wherein it was held that withdrawal of petition without permission to institute fresh petition will make subsequent petition non-maintainable.

10. Coming to the submissions raised by both the Counsel, as far as maintainability and proceeding of this petition is concerned, we are not inclined to accept the submissions of Mr. Kaptan. Mr. Deshpande opposes it by pointing out that in view of the subsequent development the second petition was withdrawn. It cannot have the effect on the petition which was already filed and wherein substantial issues were involved. As a matter of illustration, we would like to refer to the approach which the Apex Court has recently adopted in the case of *Director, Government of India Vs. General Secretary, Central Government Small-Scale Industries Organisation Employees' Union and Another*. Although, it is a judgment on facts of that particular case, what is to be noted is that inspite of withdrawal of S.L.P., a substantive petition to challenge the original order was subsequently filed and proceeding of that petition was left undisturbed

by the above order of the Apex Court. In the present case, we are concerned with the continuation of the prior petition wherein substantive issues are raised, they are pending determination and wherein already interim order is passed. That being so, in our view, the withdrawal of the second petition during the pendency of the first petition would not affect the continuation of the proceeding with the first petition.

11. In our view, the crux of the controversy can be resolved if we look to the provisions of section 14(5) of the Act. There has been much comment by both the Counsel with respect to the Regulations and as to whether the application has been filed within six months of coming into force of Regulations 1995. Again in this behalf, what is material to note is that the application filed by the petitioner was not rejected on the ground that it was not filed within six months of 1995 Regulations coming into force. In any event, section 14(5) of the Act is enabling provision. This kind of situation always comes up whenever such regulatory mechanism is introduced. For those who are required to be governed under the new system, certain problems are bound to arise. Sub-section (5) of the section 14 of the Act specifically states that if the application for recognition under the particular Act is rejected, the courses run by the institution would be permitted until the completion of the academic year. In the instant case, the application came to be rejected in August 1999. That was the year when the academic course for the year 1999-2000 had already started from June 1999. That being the mandate of the legislature, and having been rightly enacted in the statute, the petitioners are entitled to the benefit of that course.

12. The submission of Mr. Kaptan that the application should have been filed within six months of the earlier Regulations, in our view, cannot stand in the face of provisions of section 14(5) of the Act. This being our view on section 14(5), the reliance on Regulation 12 or whatever are the provisions of the two Regulations etc. is of no consequence. However, we would like to add that basically the petitioner-institution is imparting education for physical training to teachers and that being so, it cannot be said that in 1995 when general regulations were framed the petitioners were expected to apply under those regulations. What is material to note in this behalf is that the appendices to the 1995 regulations are about the primary and secondary education. No provision as such has been made in those regulations for the training colleges in physical education. The regulation in that behalf came into force for the first time in 1998 and in view of the dicta of the Apex Court in the case of P. Kasilingam, cited supra, when the Regulations were not in existence, the Act could not have been extended to the institution of the type run by the petitioners.

13. As far as the submission of Mr. Kaptan on Clause 12 is concerned, we would like to record the emphasis of Mr. Deshpande on the unreported judgment of a Division Bench of this Court in Writ Petition No. 3950 of 1999, Shree Hanuman Vyayam Prasarak Mandal v. The State of Maharashtra & others, W.P. No. 3950/1999 particularly on paragraphs 49 to 53 thereof. The Division Bench in

that judgment held that Clause 12 cannot be extended beyond what the Regulation contemplates. In our view, the emphasis is well laid. But in any event, as stated earlier, the provision of section 14(5) is quite clear and that being so, the petition will have to be allowed.

14. Accordingly, Rule issued in this petition is made absolute. The order passed by respondent No. 2 on 4-8-1999 and communicated on 7-8-1999 by the first respondent is set aside. The students who have appeared for the B.P.Ed. Examination in June 2000 will be eligible for getting their results declared. The respondent No. 1 is directed to declare their results. Rule is made absolute in above terms. No costs.