

(2008) 03 MP CK 0013

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1042 of 2008

Bhandewal Shiksha Samiti

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 31-03-2008

Acts Referred:

Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 36

Citation : (2008) 3 MPLJ 197

Hon'ble Judges : Ravi Shankar Jha, J;Dipak Misra, J

Bench : Division Bench

Advocate : R.S. Verma, for the Appellant; Deepak Awasthy, Government Advocate, for Respondent Nos. 1 and 2, Sanjay Seth, for Respondent No. 3, Sunil Pillai and K.K. Singh and Sanjay K. Agarwal, for the Respondent Nos. 5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

The petitioner, a registered society, runs a college, namely, Rajshree College of Education and as asseverated is imparting education in B.Ed. The National Council for Teachers Education (in short "the NCTE") passed an order of recognition in favour of the educational institution run by the society and thereafter the society applied for "No Objection Certificate" and eventually the same was granted subject to condition that the institution would admit the student to its intake capacity and further to deposit a sum of Rs. 10,000/- in the form of Fixed Deposit with the State Government. Though the aforesaid conditions were onerous and unreasonable, to avoid any kind of complications the petitioner complied with the same. Despite compliance of the conditions the Barkatullah University, the respondent No. 3 herein, vide order dated 21-8-2007 rejected the application for recognition. Being dissatisfied with the aforesaid order the petitioner preferred a Writ Petition No. 11438/2007. In the meantime the Additional Director, Higher Education cancelled the recognition vide order

dated 15-1-2008 on the ground that the college was inspected on 14-12-2007 and it was found that the college was non-existent in the given address and accordingly the permission granted stood withdrawn.

It is contended that the communication visited the petitioner because of non-fulfilment of illegal demand of the respondents 5 and 6. It is urged that the university after making proper inspection had granted affiliation for the academic session 2006-07 by order dated 21-8-2007 as per Annexure P-4. It is set forth that the petitioner applied for appointment of regular teachers as required under Regulation 28 of the University and at that stage the State Government communicated to the petitioner that on inspection it was found that the college did not exist at the so-called place. The said communication was made on 12-7-2007 as per Annexure P-7. To the aforesaid, a detailed reply was sent by the petitioner indicating the reasons as per Annexure P-8. It is urged that the college is situated at the address given. In proof of the same through the document contained in Annexure P-9. That apart a document has also been brought on record with regard to the inspection conducted by the NCTE as Annexure P-10. It is averred that once the NCTE has granted recognition, the State Government has no role to play and, therefore, communication made by the State Government has no legs to stand upon. It is urged that action taken by the State Government is unsustainable and illegal and liable to be axed by this Court. In this factual backdrop a prayer has been made for issue of a writ of certiorari for quashment of the impugned communication dated 14-12-2007 and 15-1-2008 as contained in Annexures P-3 and P-3A.

A counter-affidavit has been filed by the respondents 1 and 2 contending, inter alia, that the Higher Education Department has framed certain guidelines for opening of new private colleges/new faculties/new subjects and continuation of running courses. The said guidelines have been brought on record as Annexure R-1. Various aspects and procedures have been enumerated. It is put forth that before the Legislative Assembly a question was raised with regard to the private colleges running B.Ed. Courses. In pursuance of the same an investigation was made and it was found that no college is run by the petitioner Samiti at the place in question. It is put forth that the so-called college has not been established in accordance with the guidelines. Video compact disc has been brought on record as per Annexure R-3 to highlight how in a casual manner the petitioner is imparting education to B.Ed. students. It is averred that on 24-3-2007 the petitioner was granted three days' time to submit detailed information and documents regarding objections raised. It is asseverated that the Department of Higher Education had granted conditional "NOC" on 13-2-2007 to the petitioner institution clearly mentioning that fulfilment of all the required standards will be ensured by the NCTE and School Education Department and the institution shall remain responsible for providing any incorrect information. It is asserted that the NCTE has framed norms and standards for secondary teacher education and programme leading to teacher of education B.Ed. degree. A copy of the norms have been brought on record as per Annexure R/6. It is contended that as the

petitioner had not fulfilled the norms laid down by the NCTE and hence, the cancellation was done.

A counter-affidavit has been filed by the Regional Director of the Western Regional Committee, NCTE, Bhopal stating that the recognition was given to Rajshree College on the basis of the land title certificate issued by Shri S.K. Saxena, Advocate and lease deed produced by the institute and further on the basis of V.T. Report. It is also stated therein that the recognition was granted subject to fulfilment of conditions and requirements prescribed by the regulatory bodies like UGC and the State Government. The said provision is contained in clause F of the paragraph 4 of the order dated 15-9-2006 which has been brought on record as per Annexure P-2 to the petition.

A reply has been filed by the respondents 5 and 6 who have arrayed as respondents by names stating, inter alia, that before admitting students the educational institution should have obtained prior sanction from Commissioner of Higher Education. u/s 36 of the Vishwavidhyalaya Adhiniyam, 1973 statutes have been framed laying down the conditions for the admission to the educational institution to the privilege of a university. Emphasis has been laid on the guidelines framed by the State Government for opening of new private colleges/new faculties/new subjects in continuation of running courses. It is put forth that the petitioner institution had submitted application on 28-6-2006 i.e., after the cut off date and hence, the same was rejected. It is urged that the petitioner was granted recognition by the Western Region Committee for the National Council for Teachers Education by order dated 15-2-2006 and hence, taking a sympathetic view a decision was taken to grant conditional sanction for affiliation for a period of 45 days during which the institution shall complete all the necessary formalities. The petitioner was required to fulfil all the requirements within 45 days but no steps were taken in that regard. Respondents did not receive any communication from the petitioner regarding fulfilment of prescribed norms and standards. On 10-4-2007 the petitioner submitted another application for continuation of the sanction for affiliation for the academic session 2007-08. It is put forth that along with the said application the petitioner submitted copy of the lease deed pertaining to the building situation at Plot No. 92, 93 Old Nariyal Kheda Bhopal and enclosed a copy of the order dated 15-9-2006 issued by the Regional Director, NCTE and order dated 22-9-2006 issued by the Commissioner, State Education Centre granting recognition to the petitioner. A reference has been made to the contents of the lease deed to show that an intention was expressed that to open college in a building constructed on plot area 2000 sq. ft. and total construction area was mentioned as 6000 sq. ft. stretching over 3 floors. The application was considered by the Commissioner, Higher Education and it was found that the accommodation was not sufficient for establishment of an educational institution. It was further found that the petitioner does not fulfil the requirement of having 3 acres of land. As the petitioner did not fulfil requirement the application for continuation of sanction of the affiliation for the academic session 2007-08 was rejected by order dated

18-5-2007. Feeling aggrieved the petitioner preferred an appeal before the State Government. While the appeal was pending the petitioner preferred a Writ Petition No. 114338/2007 before this Court wherein the petitioner was granted conditional permission to participate in the process of counseling for admission of the students. Though the petitioner institution did not have sanction for affiliation from the Commissioner of Higher Education it admitted students in B. Ed. Course for academic session 2007-08 on the strength of interim order passed by this Court. As questions were raised before the Legislative Assembly, an inquiry was conducted and it was found that in the building situated at 92 Old Nariyal Kheda Bhopal is a residential building and a school is being run in the said building. A report was submitted to the Higher Education Department and it was considered by the State Government and it was found that no college exists at the given address. Keeping that in view, the State Government passed the order on 14-12-2007 whereby the Commissioner, Higher Education was directed to withdraw the sanction for affiliation. On the basis of the aforesaid communication, instructions were issued to the University to cancel the affiliation. The allegations that a gratification was asked from the petitioner by the said respondents has been denied.

As the primary cavil arose with regard to existence of the college a committee was appointed by this Court by order dated 5-2-2008 which reads as under:

By this writ petition, the petitioner has prayed for issue of writ of certiorari for quashment of the communication dated 21-8-2007 contained in Annexure P-3 (erroneously typed as Annexure P-5).

On a perusal of Annexure P-3, it is perceptible that the Additional Director the Department of Higher Education by communication dated 15-1-2008 has cancelled the recognition on the ground that the petitioner, college namely Rajshree College of Education run by Bandewal Shiksha Samiti is not situated at the address given. It is not disputed by Mr. R.S. Verma, learned counsel appearing for the petitioner that the college is situated at 92, Old Nariyal Kheda, Bhopal.

Per contra, it is submitted by Mr. Deepak Awasthy, learned Government Advocate that the college which is suppose to run B. Ed. Course is not a college but infact it is a residential premises. In essence, contention of Mr. Awasthy is that in the absence of existence of college the question of grant of "No Objection Certificate" or application by any authority does not arise.

At this juncture, we must appreciate that the courage and enthusiasm of Mr. R.S. Verma, learned counsel who fairly stated that he would have no objection if a committee is constituted by this Court to verify the existence of the college from all aspects. True it is, this is the duty of the other authorities but as the State Government has taken a stand we made a query from Mr. Awasthy whether he has any objection. Mr. Awasthy submitted with all fairness at his command that keeping in view Annexure P-3 he does not have the slightest resistance for

constitution of the committee. In view of the aforesaid, we appoint a committee consisting of the following members namely Mr. Sujoy Paul, Mr. Shashank Verma and Mr. Ajay Pratap Singh to verify the same and submit a report.

Mr. Awasthy has agreed that all the expenditure of the committee shall be borne by the State Government in praesenti. The committee shall be taken to the place in question and assisted by the Additional Collector, Bhopal. Needless to emphasise, all other ancillary arrangement shall be made by the Commissioner, Higher Education Department. Mr. Paul who is nominated as the Chairman of the Committee undertakes to submit a report within a week.

After the committee submitted a report this Court on 21-2-2008 after referring to the earlier order passed the following order:

In pursuance of the aforesaid, the committee has submitted a report. In paras 3 to 5, the committee has stated as follows:

3. That, the committee was informed by said Shri Rajesh Kumar that Rajshri Niketan High School was established in the year 1990. On spot inspection, the committee found that building situated at 92, Old Nariyalkheda, Bhopal is basically a High School building consisting of 4 class rooms, one computer room, one newly established psychology lab and one recreation hall. One room is situated on the second floor of the building. Shri Rajesh Kumar informed that in the first shift Rajshree High School runs in the building from 8.00 to 12.00 noon and thereafter from 12.30 to 5.30 B.Ed. classes of Rajshree College of Education take place.

That, on the forehead of the building situated at 92, Old Nariyalkheda, Bhopal the name of Rajshree College of Education and Society are mentioned in big letters. On a closure scrutiny, the committee found that the name of college is not written or painted recently.

The committee also perused original official records and files in the office of the College and found that NCTE has written certain letters to Rajshree College of Education at the address of 92, Old Nariyalkheda Bhopal. These letters are delivered to the college. On perusal of these letters, it is found that a committee of NCTE has made inspection of the College to gather as to whether the college fulfils the norm of NCTE or not. However, whether college fulfills the norms of NCTE or not was not the subject-matter of enquiry for the committee, the committee has not addressed itself on this facet.

Be it noted, the committee in para 6 has opined that the building at the said address is of an educational institution and is not a residential premises. The committee has expressed opinion that Rajshree College of Education is in existence.

The question that would emerge for consideration is whether the College as has been described by the committee meets the requirement and norms provided by the NCTE. We would also like to be apprised on what basis the State Government

had granted no objection certificate and on what basis the University had granted affiliation.

Regard being had to the scenario in entirety and keeping in view the Regulations framed by the National Council for Teachers' Education in the year 2005, we would like to be apprised the basis and foundation on which recognition granted and how the so-called notice contained in Annexure P-2 was issued. We would like the Regional Director, Western Region, Bhopal to file an affidavit in that regard. We would like the Commissioner-cum-Director, Higher Education Department to file an affidavit. MR. P.K. Kaurav, learned counsel on whom copy of the petition was served shall intimate the Registrar, Barakatulla University to file an affidavit. The respondents 5 & 6, who are represented by Mr. Sanjay K. Agarwal shall also file a reply in this regard.

For better assistance and to get the answer to our queries, we would like the Commissioner-cum-Director, Higher Education, Regional Director, Western Region of NCTE Bhopal and respondents 5 & 6 who have been arrayed personally as parties, to remain personally present in Court on the date fixed.

Mr. Deepak Awasthy, Mr. K.K. Singh, Mr. Sanjay K. Agarwal are requested to ensure the personal presence of the aforesaid authorities, failing which this Court would be constrained to initiate proceeding for contempt against the said authorities.

The Secretary of the petitioner institution Rajesh Kumar son of late Dayaram shall also remain personally present on that day, failing which this Court will be constrained to issue non-bailable warrant of arrest against him.

Let the matter be listed for further hearing on 11th March, 2008.

The committee has compartmentalised its inspection report to existing status of classrooms on the ground floor and the first floor. The committee has also adverted to other facilities on the ground floor and also referred to norms as provided under NCTE Regulations. The Committee has also dealt with sports room, play ground and also taken note of size of library, multipurpose hall, toilets, land and building. The committee has also found that the Principal is not a qualified person and a school runs in the said educational institution and further the Principal of the School is also a lecturer in the college. On a scrutiny of the report, which has not been controverted by the petitioner in any manner, we would like to refer to the essential part of the same. Report pertaining to the classrooms reads as under:

Class rooms in ground floor:

There is a hall, which is divided by aluminum frame partitions and converted into classrooms of following measurements--

(1) A staff room:-19" x 11".7"sq.ft. (photograph marked as "A")

(2) One hall measuring 19".8 x 24".2" sq.ft.

Projected as two classrooms measuring : 19".8" x 11".7" sq.ft. each. There is no partition between these two class rooms.

(photograph marked as "B")

(3) A classroom measuring 11".7" x 19".8" sq.ft.

This classroom is equipped with the tiny wooden desks and a side, (photograph marked as "C")

Class rooms in first floor:

For B.Ed. students:

(1) The measurement and size of 5 Classrooms are mentioned below:

(i) Class room-I : 19".8 x 11" sq.ft. Consisting of 9 desks cum bench.

(ii) Class room-II: 11 ".7" x 19.8 sq.ft. Consisting of 7 desks cum bench.

(iii) Class room-III: 12".3" x 19".8" sq.ft Consisting of 10 desks cum bench.

(iv) Class room-IV: 11".3" x 19".8" sq.ft. Consisting of 10 desks cum bench.

For School

(i) Class room-V: 14". 10" x 10".8" sq.ft. Consisting of 8 small desks cum bench for school classes.

(ii) Class room-14".10" x 11".4" sq.ft. for school students.

With regard to play ground, the report of the committee is as under:

Playground:

Existing Status

The college does not have its own play ground. A ground approximately situated at a distance of about 100 metres is shown by the college as play ground used by the college. The size of the playground is 200 x 4-00 sq. metres. The ground is not equipped with any kind of facilities. Committee is informed by the petitioner that ground belongs to a nearby Dargah, which has authorized the college to use their ground for college games and sports activities. The said playground of the Dargah is shown in the photograph for which permission has been obtained by the college. (Photographs of playground is marked as "L").

With regard to existing status of the staff it is as under:

Existing Status:

There are seven lecturers working in the B.Ed. College, all of them are qualified as per the existing norms of NCTE. However the members of the committee found that only following staff members have available at the time of inspection:

(1) Principal - 01

(2) Lecturers - 02

(3) Librarian - 01

(4) Lab attendant - 01

The Committee was informed that the remaining, lecturer are occupied/engaged in other nearby schools. As per experts opinion although principal is academically qualified but does not possess 5 year required experience in B.Ed. college.

It is not disputed before us that the application for grant of recognition was filed on 31-12-2005. The NCTE Recognition Norms and Procedure Regulations, 2005. (for short "2005 Regulations") came into existence on 31-1-2005. The recognition has been granted on 15-9-2006. In view of the aforesaid, there cannot be any scintilla or shadow of doubt that 2006 Regulations would be applicable. On a perusal of the Regulation of 2006 and appreciating the report there is no trace of doubt that the norms prescribed under the regulations have not been met with. True it is in *Janseva Siksha Samiti vs. State of M.P.*, Writ petition No. 12133/2006 this Court has held that the State Government has no role in the grant of "No Objection Certificate" and the State Government could not have cancelled the recognition. But when a stand was taken that the college did not exist at the premises in question, this Court took it upon itself to inquire upon the matter and the same was done with the consent of the learned counsel for the parties. If the report and the regulations are studied in a juxtaposition it is vivid and luminescent that the norms are not satisfied. Hence, the college really does not deserve recognition at present. That apart, the College could not have admitted the students without proper affiliation. The folly is writ large. It mirrors itself like a python.

In this context we may refer with profit to the decision rendered in *Siddhi Vinayak College, Bhind vs. The State of M.P. and others*, WP No. 1558/2008 decided on 6-2-2008 wherein while dealing with the aspiration and indefatigable spirit of the institutions the Court has stated thus:

12. Ordinarily so saying, we would have dismissed the writ petition but, a significant and unavoidable one, the educational institution which is expected to understand the norms, guidelines, circulars, regulations and the Act governing the field of education in proper perspective, made an adroit attempt to move an application before the Board to obtain permission for appearing in the Examination to be conducted in May-June, 2008 solely and singularly on the basis that it had admitted students on the basis of an interim order passed by this Court. When interim order merged with the final order this Court unequivocally expressed the view that it was inconceivable how an institution without recognition could foster the idea to admit students. This Court had also observed that a daydreamer can build a castle in the air or for that matter castle in Spain, but it is absolutely inapposite on the part of the aspirants registered bodies or institution to admit students and pyramid the foundation relying on the bedrock of legitimate expectation that the students would be treated as students

to have been admitted in such institutions in such courses. This Court had also observed that an educational-institution has to conduct itself in an apple pie order and has to maintain the sacredness of the concept behind imparting education. This Court had also expressed the opinion that the perception of the institutions had been blinded as a result of which a cataclysm had been unwarrantably invited. Despite the aforesaid observations a superstructure is sought to be built again to have the permission from the Board to appear in the examination knowing fully well that admission can take place only after grant of recognition. Anything that had been done prior to grant of recognition, as held by this Court, has no existence in the eyes of law.

The aforesaid paragraph, as has been indicated earlier, was stated in a different context, but, there is link, an inseparable one, between the two litigations. One relates to the indefatigable aspiration and Sisyphean endeavour to achieve the same; and the present one clearly frescoes a picture of playing truancy with the truth which is inextricably connected with justice. Justice can never be oblivious of truth. Truth can never be divorced from justice. It is a marriage in perpetuity maintaining sacrosanctity, living in a balanced compatibility and earned harmony. No society or institution can play with the educational system. The statutory bodies who are in-charge of maintaining the standard of education cannot be allowed to mortgage their conscience and take a holiday from their sacred duties. The development of a nation is known by the education it imparts. It is really a puzzling one, and in a way baffling, that the petitioner-society in the same premises runs a school and also a B.Ed. college. It is also perplexing that the institution though had been extended the benefit of intake capacity of 100 there has been no facilities. Recognition is required to be granted on proper verification. The NCTE has granted, as is patent, conditional recognition, but as is perceivable no due care was taken. True it is, the State Government issued the letters which are not within their jurisdiction. But, when a stance was taken to the effect that the College is not in existence this Court could not have brushed it aside. On concession, the Committees were appointed and reports have come. They have been reproduced above. The reports speak in volumes and in a quite eloquent manner that how the requisite provisions have been given a unceremonial burial and an effort has been made to run the college. True it is, a society or an association has a right in law to establish a college to impart education but the norms cannot be thrown to the Bay of Bengal. The norms are prescribed to be adhered to. No educational institution by nomenclaturing or styling itself to be one, play foul with the system. The law does not countenance it. The same if allowed, the posterity will not forgive the present generation, for law also takes care of the posterity in a way. The authorities of NCTE should be alive to the norms framed by the NCTE and dare not create any concavity or dent for any because a dent in the system of education is a dent in the progress, civilization and culture. The NCTE must remember that it imparts education to such students who are going to become teachers. One can also say how long the collective can tolerate such breaches and such foul play. "Awake, Arise, "O"

Partha", reminds Gita, every day, every hour and every minute.

In view of our premised reasons, we do not find any merit in this writ petition and come to hold that the cancellation of recognition of the petitioner's college does not warrant any interference. The inevitable sequitur is dismissal of the writ petition, which we direct with cost of Rs. 15,000/- (Rupees Fifteen Thousand) only.