
(2009) 07 SHI CK 0031
In the High Court Of Himachal Pradesh

Bhartiya Education Society and Another	APPELLANT
Vs	
State of H.P. and Others	RESPONDENT

Date of Decision : 22-07-2009

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 14(3)(a)

Citation : (2009) 3 ShimLC 118

Hon'ble Judges : R.B. Misra, J;Deepak Gupta, J

Bench : Division Bench

Judgement

Deepak Gupta, J.—The petitioner No. 1 is a society. This society runs an institute, known as Rameshwari Teachers Training Institute, i.e. petitioner No. 2, which imparts Junior Basic Teacher Training.

2. The grievance of the petitioner is that though the petitioner No. 1 has been granted recognition by the National Council for Teacher Education (NCTE) in terms of Section 14(3)(a) of the National Council of Teachers Education Act, 1993 and affiliation has also been granted to the petitioners by respondent No. 2, H.P. Board of School Education, the State is not sponsoring any students for undergoing J.B.T. course in the petitioner No. 2 institute. The admitted facts are that initially the NCTE had recognized the petitioners for intake of 50 students for JBT course, but by order dated 12.9.2002, this capacity was raised from 50 to 100. A copy of order passed on 26.6.2003 granting additional intake of 50 seats has also been attached with this writ petition.

3. The Principal of the petitioner No. 2 institute filed an application for grant of affiliation for the batch 2008-2010 alongwith requisite fees and documents to respondent No. 2 in August, 2008. Respondent No. 2 sent a communication dated 14.8.2008 to the petitioner. Some shortcomings were pointed out in the petitioner No. 2 institute. The area of one class-room was less than the prescribed specification and the area of the room of the Principal was also less than the area prescribed. Certain other short-comings were also pointed out. The petitioners removed the said shortcomings and sent communication in this behalf

to respondent No. 2 on 28.8.2008. On 23.10.2008, affiliation was granted to the petitioners for the academic session 2008-2010. The only condition laid down was that the area of the Principal's room be increased as per the norms. On 4.11.2008, the petitioners informed respondent No. 2 Board that the area has been increased, as per the requisite norms.

4. On 20.12.2008, a Notification was issued which Notification is the bone of contention between the parties. The said Notification reads as follows:

The Government of Himachal Pradesh is pleased to constitute the following committee for carrying out inspection of private institutions except RTTI Kullu to consider allotment of students to run 2 years JBT course for the session 2008-10.

1. Director Elementary Education, Himachal Pradesh, Shimla-171001

Chairman

2. Sh. O.C. Katoch, Addl. Director, Directorate of Higher Education, Himachal Pradesh, Shimla-171 001.

Member

3. Sh. Baldev Kumar, Deputy Director Directorate of EE, Himachal Pradesh, Shimla-171 001.

The committee will submit its report for consideration of the Government in 15 days.

5. Immediately thereafter, the petitioners wrote a number of letters to the respondents asking what is the reason that their institute has been excluded for the purpose of inspection. On 26th February, 2009, the Principal Secretary (Elementary Education) to the Government of Himachal Pradesh, issued a letter allotting candidates to 14 institutes running the JBT course. The name of the petitioner institute did not find mention in the list. The petitioner again represented against the same. Despite repeated requests of the Principal of the petitioners' institute, they were not informed as to why their institute was being ignored. The petitioners managed to obtain certain information under the Right to Information Act. One of the documents obtained by him is the noting sheet, maintained in the department of elementary education. This noting sheet shows that the State Government was aware that the petitioner No. 2 had been granted affiliation for the session 2008-2010. The only observation in respect of the petitioners' institute is as follows:

It is also submitted that this Department vide letter No. EDN.C.A.(1)-4/2004, dated 30th October, 204(F/F) has asked the Secretary, H.P. board of School Education not to grant affiliation to RTTI, Kullu because of frequent irregularities committed by it for admissions of JBT Batches. But the authorities of the Board had not bothered to the directions of the Government and granted affiliation to the RTTI, Kullu.

In view of factual position narrated above, proposal for carrying out counseling for selection of students to the private institutions, except RTTI, Kullu (affiliated by the Board for the session 2008-10) out the merit drawn from CET 2008 for JBT Course without charging counseling fee as per discussion held on 1.11.2008 in the meeting in the office chamber of Pr.Secy. (Edu) is submitted for orders of higher authorities.

6. The letter dated 30th October, 2004, reference to which has been made in the aforementioned note quoted above, has been attached as Annexure R-V with the reply of the State. This letter reads as follows:

Subject: Clarification regarding issue of No objection certificate from State Government to those privately managed Institutions have admitted students to two years J.B.T. course.

I am directed to refer to your letter No. H.B. (39) Affiliation Board/2004-20415-17, dated 22.7.2004, on the subject cited above and to say that in accordance with the Notification No. 53-3/203-NCTE(_____, dated 1st January, 2004 of National Council of Teacher Education, the approved B.Ed. institutions do not require No Objection Certificate from State Government to start J.B.T. Classes in their institutes. However, they require approval of the affiliating authority i.e. the Board of School Education. Before granting such affiliation the Board should ensure that they have necessary facilities which include own land of adequate size, buildings, library, labs, facility for recreation and games, trained and well-paid faculty, adequate financial resources, among other things. The above requirement may also be included in the norms prescribed by the Board for granting affiliation to the institutes.

The Rameshwari Teacher Training Institute, Kullu (RTTI) may not be granted affiliation because of frequent irregularities committed by it for admission of J.B.T. batches.

7. It is obvious that the only objection of the State upto 18.12.2008, when this note was prepared, was that since the State Government had directed the Secretary, H.P. Board of School Education, not to grant affiliation to the petitioner No. 2, the Board should not have granted affiliation. We pointedly asked the learned Additional Advocate General as to under what authority of law the State could have issued such a direction. No such authority could be pointed out to us.

8. Once the petitioner had been granted recognition by the NCTE and affiliation by the respondent No. 2 Board, we see no reason as to why it should not be permitted to admit students to the JBT course. The Apex Court in State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Ors. (2006) 9 SCC, has clearly held that the jurisdiction to grant recognition to such an institution lies only with the NCTE and once the NCTE takes such a decision, it has to be implemented by all the authorities.

9. A division bench of this Court, in which one of us (Deepak Gupta, J.) was a

member, in *Krishma Educational Centre v. H.P. Board of School Education and Ors.* Latest HLJ 2007 (HP) 217, on perusal of the entire Act, held as follows:

11. However, on perusing Section 15 of the 1993 Act, aforesaid, the final authority, for recognition, in our opinion, lies with the NCTE in the light of relevant provisions of the Act and the appropriate authority to take decision regarding opening of new educational institutes is NCTE. Neither the State or the University or Board can act contrary to the decision of NCTE, they are supposed to implement the decision of NCTE and in this behalf, we are supported *mutatis-mutandis* by the view taken by the Supreme Court in *State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others*, which has categorically held that the final decision can only be taken by the NCTE and once the decision is taken by NCTE, it has to be implemented by all the authorities in the light of the Act and the law declared by the Apex Court in *St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education and Another*, Therefore, the absence of non-production of NOC by the Institution after the recognition has been given by NCTE is wholly immaterial and irrelevant.

12. Therefore, in these circumstances, the crux of the matter is that neither the State Government nor the Board can refuse such permission to the petitioner Institution which has been granted permission to start the JBT Elementary Course by the NCTE nor the Policy decision of the State Government or the respondent Board is in the form of regulation or otherwise, in the light of the mandatory provisions of the Act, aforesaid, can withhold sponsoring of the candidates to the petitioner Institution. xxxxxxxxxxxxxxxx.

10. During the course of arguments, the State has tried to bring certain other material on record to show that the petitioner institute is running other educational courses in violation of the law and, therefore, the writ petition should not be allowed. Basically, they are trying to justify the decision taken on 18.12.2008 on the grounds which were not taken into consideration on that date. The Apex Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, held as follows:

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out.

11. It is obvious that the State cannot be permitted to justify their illegal actions on fresh grounds. Even if we were to take fresh grounds into consideration, in our considered opinion, they are not germane to the case in hand. The petitioner institute faced litigation in respect of their past misconduct and a Division Bench of this Court in its judgment, dated 12.7.2007, passed in CWP Nos. 251 and 252 of 2005, filed by petitioner No. 2, clearly punished the petitioner for its mis-

deeds for the earlier period. At that time, the petitioner institute had admitted the students without having any affiliation and this Court held that without affiliation, the petitioner institute could not have admitted the students and we had, in connected matters, directed the petitioners herein, to pay damages of Rs. 50,000/- to each of the students, who were before us. We are told that this judgment has been challenged before the Apex Court. There is a great change from the time when earlier judgment was passed. Thereafter the petitioner has been specifically granted affiliation for the year 2008-2010. It also has valid recognition. Therefore, the State is bound to sponsor students for the petitioner institute.

12. In view of the above discussion, we allow the writ petition and quash the Notification, dated 20.12.2008 and further hold that the petitioner institute is entitled to get students sponsored for JBT course. The respondent No. 3 is directed to sponsor/allot 100 students to the petitioner institute within 15 days from today. We are told that some counseling is being held from 23.7.2009. The students appearing in such counseling will be given an option of joining the petitioner institute. Thereafter, respondent No. 3 shall hold fresh counseling for filling up the balance seats in the petitioner No.2 institute. The entire process shall be completed within 15 days from today.

13. On perusal of the pleadings, we find that the Government has taken up the matter with regard to de-recognition of the petitioners with the NCTE. This matter has to be decided on its own merit, totally uninfluenced by the present judgment.

14. With these observations, the present writ petition stands disposed of. All the pending applications, if any, also stand disposed of.