

(2006) 06 GUJ CK 0046

In the Gujarat High Court

Case No : Special Civil Application No. 9483 of 2006

Bharuch Jilla Adarsh Samaj Seva Mandal

APPELLANT

Vs

Veer Narmad South Gujarat University and Others

RESPONDENT

Date of Decision : 06-06-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Universities Act, 1994 — Section 82, 83
National Council for Teachers Education (Norms and Standards for Teacher Education Programmes) Regulations, 2001 — Regulation 7(10), 7(11), 7(12)
South Gujarat University Act, 1965 — Section 14(6), 34

Citation : (2006) 3 GLR 2037

Hon'ble Judges : M.R. Shah, J

Bench : Single Bench

Advocate : SN Shelat, for the Appellant; Prakash K. Jani, for Respondent 1, Government Pleader for Respondent 2 and DC Dave, for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

M.R. Shah, J.—Rule. By way of this petition under Article 226 of the Constitution of India, the petitioner Trust (Self-financed Institute) has prayed for an appropriate writ, direction or order quashing and setting aside the decision/communication dated 26th May 2006 of the respondent No. 1 University refusing to grant affiliation to the petitioner for starting Self-Financed B.Ed. College. The petitioner has further prayed to direct the respondent No. 1 University and the respondent No. 2 State Government to grant affiliation to the petitioner Institution on the basis of the recognition granted by respondent No. 3, i.e., National Council for Teacher Education [hereinafter referred to as NCTE].

2. It is the case on behalf of the petitioner that as the petitioner wanted to start a new B.Ed. College at Mangrol, the petitioner Trust applied for NOC from the State Government and the State Government granted NOC to start a new B.Ed. College. It is also the case of the petitioner that the petitioner Trust submitted

appropriate application to the NCTE for granting approval/recognition to start a new Self-Financed B.Ed. College at Mangrol from the Academic Year 2005-2006, and the NCTE, by order dated 25th February 2005, granted approval/recognition to the petitioner Trust to start a new Self-Financed B.Ed. College at Mangrol with intake capacity of 100 students for the Academic Year 2005-2006. It is submitted that as one of the conditions imposed by the NCTE was that the petitioner should get affiliation of the respondent No. 1 South Gujarat University the petitioner addressed a letter to the respondent No. 1 University on 2.3.2005 intimating about the approval dated 25th February 2005 of the NCTE and requested to grant affiliation. However, considering the policy decision of the State Government not to grant NOC for starting new B.Ed. College in the State of Gujarat for the Academic Year 2005-2006, the respondent No. 1 University did not grant affiliation. The petitioner therefore preferred Special Civil Application No. 7359 of 2005 before this Court for an appropriate writ, direction or order for a direction on the respondent No. 1 University to grant affiliation in favour of the petitioner Trust, and, when the said Special Civil Application came up for final hearing before this Court, this Court by judgment and order dated 11.5.2005 directed the University to consider the application of the petitioner for affiliation in light of Section 34 of the South Gujarat University Act, and to hold an enquiry; and also directed the Registrar of the University to submit the application and other proceedings, if any, of the Academic Council and the Syndicate to the State Government, after which the State Government was directed to take appropriate decision on merits and in accordance with law. It appears that thereafter the Academic Council, after holding necessary enquiry, decided not to grant affiliation. The petitioner, therefore, has preferred the present Special Civil Application for the aforesaid reliefs, and during the pendency of present petition petitioner was communicated vide communication dated 26th May 2006 about the decision of the Academic Council taken after holding enquiry not to grant affiliation to the petitioner Institute for the Academic Year 2006-2007. It is required to be noted at this stage, that the petitioner Trust was granted recognition/approval by the NCTE initially for the academic year 2005-2006 vide approval/recognition dated 25th February 2005, however, considering the request of the petitioner for extension of recognition for the academic year 2006-2007, the NCTE vide communication dated 9.3.2006 as a special case granted permission to start the course from the academic session 2006-2007 instead from 2005-2006. Being aggrieved and dissatisfied with the decision of the Academic Council of the respondent No. 1 University in refusing to grant affiliation to the petitioner Institute, the petitioner has preferred the present Special Civil Application for the aforesaid reliefs.

3. Shri SN Shelat, learned Senior Advocate, appearing for the petitioner has vehemently submitted that considering the provisions of National Council of Teachers Education Act, 1993 (Act No. 73 of 1993) as well as National Council for Teacher Education (Recognition, Norms and Procedure, 2005), once recognition/approval granted by the NCTE after following due procedure as required to be

followed under the provisions of the aforesaid Rules of 2005 and after having proper inspection by the Inspection Team, and having satisfied about the need, infrastructural equipments, educational facilities etc., it is not open for the respondent No. 1 University not to grant affiliation. It is also submitted by learned Senior Advocate, Shri Shelat that while granting recognition vide communication dated 25th February 2005 the only objection raised was with regard to appointment of one Lecturer at Serial No. 7 who according to the NCTE was not a qualified person. It is further submitted by him that when the petitioner Trust approached the University for the purpose of deputing their representative for appointment of staff/Lecturers, on one hand the University is not deputing their officer on the ground that there is no affiliation, and on the other hand affiliation is refused on the ground that sufficient qualified staff is not available. Relying upon the recent Judgment of the Hon''ble Supreme Court in the case of State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others, , it is submitted by Shri Shelat that once recognition is granted by the NCTE the expert body, it is not open for the University to refuse affiliation. It is further submitted by Shri Shelat that considering the scheme of NCTE Act and the Regulations, it is held by the Hon''ble Supreme Court that once recognition has been granted by the NCTE u/s 14(6) of the Act, every University is obliged to grant affiliation to such Institution and Section 82 and 83 of the Maharashtra University Act (as applicable in that case) would not apply to such case which is *pari materia* to the provisions of the South Gujarat University Act, more particularly Section 34 of the Act. It is, therefore, requested to allow the present Special Civil Application and direct the respondents to grant affiliation.

4. The present Special Civil Application is opposed by Shri D.C. Dave, learned advocate appearing on behalf of respondent No. 1 University. An affidavit-in-reply is filed on behalf of the University to submit that for affiliation with the respondent No. 1 University, the concerned College is required to follow the procedure as envisaged by the provisions embodied in Section 34 of the South Gujarat University Act, 1965 and the norms of University. It is further submitted that as per the aforesaid provisions, upon receipt of an application from the concerned College, the Syndicate of the University is required to cause an inspection of the infrastructural and other facilities available in the set-up of such a College through an Enquiry Commission to be constituted by it. It is submitted that in the present case immediately on receipt of the application for affiliation from the petitioner in respect of its proposed B.Ed. College, a Local Enquiry Committee was constituted and the said Local Enquiry Committee visited the premises of the proposed college on 23rd March 2006. After inspection of the premises of the proposed college of the petitioner the said Local Enquiry Committee submitted its report dated 23rd March 2006 and the recommendations of the Local Enquiry Committee were to the negative due to lack of infrastructural and other facilities in the set-up of the petitioner to commence the proposed college in the discipline of B.Ed. It is further submitted that the report of the Local Enquiry Committee was placed before the Academic

Council of the respondent No. 1 University in accordance with Sec. 34 of The South Gujarat University Act and thereafter the Academic Council in its meeting convened on 13th April 2006 passed a resolution recommending to the Syndicate of respondent University that in view of the report of the Local Enquiry Committee, it would not be in the fitness of things to grant affiliation to the concerned proposed College of the petitioner. It is further submitted that the recommendations of the Academic Council were tabled before the Syndicate of the respondent No. 1 University which were in turn considered by the Syndicate in its meeting convened on 21st April 2006 and a resolution came to be passed by the Syndicate accepting the recommendation of the Academic Council. It is further submitted that as per the provisions of Section 34 of the South Gujarat University Act, 1965, the final authority in the matter of affiliation vests with the State Government and it was decided to place before the State Government the decisions of the Syndicate, and Academic Council for appropriate decision thereon. It is submitted by Shri Dave that once affiliation is granted, students of the petitioner Institution would be considered to be the students of the respondent No. 1 University, and therefore it is the duty of the respondent No. 1 University to ensure that all infrastructural facilities are provided and other conditions are fulfilled, i.e., to see whether there is sufficient building, library, requisite educational staff etc. Considering the recent judgment of the Hon'ble Supreme Court in the case of State of Maharashtra v. Sant Dnyaneshwar Shikshan Shashtra Mahavidyalaya and Ors. Shri Dave, while conceding that once the recognition is granted by the NCTE, the University is bound to grant affiliation to the College, has, submitted that still the University can draw the attention of the NCTE with regard to lack of infrastructural facilities and other lapses on the part of the petitioner Institute, and that the same can be considered by the NCTE before granting final unconditional recognition. It is submitted by Shri Dave that the attention of the NCTE would be drawn to the report of the Local Enquiry Committee by an appropriate report within a day or two and that an appropriate order be passed directing the NCTE to consider the same before granting unconditional final recognition.

5. In reply thereto, Shri Shelat, learned Senior Advocate, on behalf of the petitioner has submitted that once recognition has been granted by the NCTE vide communication dated 26th May 2005, NCTE is not required to do anything further for that academic year for which recognition has been granted, and the NCTE may be required to consider a report to decide the question whether to continue or not the recognition already granted, for the next academic year also.

6. Shri PK Jani, learned advocate appearing on behalf of NCTE, has also relied upon the judgment of the Hon'ble Supreme Court in the case of State of Maharashtra v. Sant Dnyaneshwar Shikshan Shashtra Mahavidyalaya and Ors., (supra) to emphasize that once recognition has been granted by the NCTE, an expert and statutory body, it is not open for the University to find fault with thereafter as the recognition/approval is already granted by NCTE after following due procedure as required under the provisions of the Act and the regulations

and the University is bound to grant affiliation. When a pointed question is asked to Shri Jani, whether initial recognition granted by the NCTE is unconditional for that year, or after considering the compliance report a formal unconditional recognition is required to be granted for that very year or not, initially, Shri Jani did not give satisfactory reply to the said query, however, after considering Sub-Regulations 11 and 12 of Regulation 7, he has submitted that initially the Institution concerned shall be informed of the decision for grant of recognition or permission subject to appointment of qualified faculty members before the commencement of the academic session, and the Institution concerned, after appointing requisite faculty/staff shall put the information on official Website and also formally inform the Regional Committee concerned and the Regional Committee concerned shall then issue a formal unconditional recognition order. It is further submitted by him that in fact under the provisions of the Act, an appeal is also provided against the decision of the NCTE to grant recognition by the aggrieved party, which has not been filed. Therefore, it is requested to pass an appropriate order, considering the judgment of the Hon''ble Supreme Court.

7. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that the petitioner Trust has been granted requisite recognition/approval to start a new Self-Financed B.Ed. College for the Academic Session 2005-2006 vide communication dated 26th May 2005 with intake capacity of 100 students and subject to condition that the College will have to submit the list of Faculty/staff duly approved by the Registrar of affiliating University before commencement of the Academic Session, and a formal order of recognition was to be passed only after receipt of the list by WRC, NCTE, Bhopal. It is required to be noted that when the recognition has been granted by the NCTE, it is only after following due procedure as required under the provisions of rules for recognition under the NCTE Act, i.e., after due verification and inspection by the inspecting team. The recognition is granted by the NCTE only after having satisfied that the Trust/Institute is having all infrastructural facilities and has fulfilled all other requirements. It is required to be noted that NCTE is a statutory expert body. Considering the scheme of the NCTE Act and the relevant Regulations, i.e., "National Council for Teacher Education (Form of application for recognition, the time limit for submission of application, determination of norms and standards for recognition of teacher education, programmes and permission to start new course or training) Regulations, 1995, and the relevant provisions under the University Act with regard to grant of affiliation, the Hon''ble Supreme Court in the aforesaid decision of *State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Ors.*, (supra), has specifically held that as per the scheme of the Act, once the recognition has been granted by the NCTE u/s 14(6), every University (Examining Body) is obliged to grant affiliation to such Institution and that provisions of Section 82 and 83 of the University Act (so far as that case is concerned) do not apply to such cases. Section 34 of the South Gujarat University Act is *pari materia* with Sections 82 and 83 of the Maharashtra University Act. Thus, in view of the recent decision of the Hon''ble Supreme

Court, once a recognition has been granted by the NCTE, it is not open for an University to refuse to grant affiliation, and the concerned University is bound to grant affiliation. Under the circumstances, the impugned decision of the respondent University, not to grant affiliation, requires to be quashed and set aside and the respondents No. 1 and 2 are required to be directed to grant affiliation to the petitioner Institute for starting Self-Financed B.Ed. College at Mangrol considering the recognition/approval by the NCTE.

8. It is required to be noted at this stage that, as per Sub-Regulation 10 of Regulation 7 of new Regulations of 2005, after having complied with all the formalities as required therein and after having satisfied that the Institution fulfilled all the conditions specified by the NCTE Act, the rules, regulations, the norms and standards laid down for the relevant Teacher Education/Programmes/ Course, the concerned Institution shall be informed of the decision for grant of recognition or permission subject to appointment of qualified Faculty members before commencement of Academic Session, and that the Institution concerned, after appointment of requisite Faculty/staff, shall put the information on its official Website and also formally inform the Regional Committee concerned, and after ensuring that qualified Faculty members are appointed, the Regional Committee concerned shall then issue a formal unconditional recognition order. Even otherwise, on consideration of the recognition/approval dated 25th February 2005, it appears to be a conditional recognition, and the Registrar of the University was communicated with regard to the recognition subject to the condition that the College shall submit a list of staff/Faculty duly approved by the Registrar of the Affiliating University before academic session. It is also so stated in the said recognition that a formal order of recognition shall be issued only after receipt of the list of staff/faculty duly approved by the Registrar of the Affiliating University in WRC, NCTE, Bhopal. The Registrar is also communicated to instruct the Institutions to adhere to the norms prescribed by the NCTE in relation to eligibility criteria for admission, infrastructure, staff, and curriculum transaction etc., to the standards laid down by the NCTE and continuous maintenance of those norms and standards is mandatory and binding on the Institution. Thus, on further inspection, if it is found by the University that the Institution is not having infrastructural facilities and/or not fulfilling and/or not complying with and/or not adhering to the norms prescribed by the NCTE relating to eligibility criteria for admission; infrastructure; staff; curriculum transaction etc. It is open for the University to draw the attention of the NCTE with regard to the same and the same may be considered by the NCTE before granting formal unconditional recognition and/or for considering further extension of recognition. It will also be open for the respondent No. 1 University to submit a Report to the NCTE if the respondent No. 1 University is of the opinion that the Institute is not complying with and/or adhering to the norms prescribed by the NCTE relating to eligibility criteria for admission, infrastructure, staff and curriculum transaction etc., and, as stated above, at present, a conditional recognition and/or for considering is granted and the formal recognition shall be granted after

submitting the list of Faculty/staff duly approved by the Registrar of the University. The said Report be considered may by the NCTE while granting final formal unconditional recognition and/or considering for further extension of recognition. However, so far as grant of affiliation is concerned, the University is bound to grant the same once recognition is granted by the NCTE. In the present case, at present, when the petitioner Institute approached the University for deputing their officer in connection with recruitment of staff/Faculty, the University is not deputing their officer on the ground that there is no affiliation granted by virtue of non-availability of requisite staff/faculty. Therefore, on grant of affiliation, the University is directed to see that their Officer is deputed in order to initiate the process for appointment of faculty,staff etc.

9. For the reasons stated above, the petition succeeds. The communication dated 26th May 2005 of the respondent No. 1 University, intimating not to grant affiliation to the petitioner Institution, is hereby quashed and set aside. The respondents No. 1 and 2 are directed to consider the application of the petitioner for grant of affiliation with the respondent No. 1 University, and the respondents No. 1 and 2 shall grant affiliation to the petitioner Institute. However, liberty is reserved for respondent No. 1 University to approach the NCTE in order to draw its attention for the purpose as stated hereinabove. The said exercise be done as early as possible. Rule is made absolute to the aforesaid extent with no order as to costs.