
(2007) 09 MP CK 0015

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4207 of 2007

Chaudhary Dilip Singh Kanya Mahavidyalaya, Bhind

APPELLANT

Vs

Jiwaji University, Gwalior and Another

RESPONDENT

Date of Decision : 25-09-2007

Acts Referred:

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

Citation : (2007) ACJ 2208 : (2008) 1 MPLJ 508

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : Deepak Chandna, for the Appellant; Tapan Trivedi, for Respondents University, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.

Shri Deepak Chandna, Advocate for Petitioner.

Shri Tapan Trivedi, Advocate for Respondents University.

Being aggrieved by the action of the University in not supplying examination forms and permitting students of the Petitioner institute to appear in the B.Ed. Examination, Petitioner has filed this petition seeking a direction to the Respondents university to grant forms to Petitioner institute.

Petitioner claims to be a institute imparting courses of study in B.Ed, the institute is run by a society registered under the M. P. Societies Registrkaran Act namely Janta Vidyalaya Shiksha Samiti, Bhind. It is stated that for starting a B.Ed. College Petitioner had applied to the NCTE by letter dated 7-7-2004, the said council recognized the Petitioner college and approved for intake of 100 students for the session 2004-05 subsequently the said approval and recognition was continued for the session 2005-06 vide letter dated 27-7-2006 and again for current session i.e. 2006-07 and next session 2007-08 vide Annexure P/I to P/4

respectively. It is stated that the State Government has also granted approval and NOC vide order dated 09-5-2003 and 06-9-2004 vide Annexure P/5 and P/6 respectively. According to the Petitioner for the academic session 2006-07 after admitting the students as per the due date, list was submitted by UPC on 28-9-2006 and by registered post and Fax on 1-10-2006, Annexure P/7 and P/8 are the aforesaid documents. Petitioner contends that despite all these formalities and deposit of requisite fee, Respondents have not issued the examination forms, for the students of Petitioner college, in spite of letter have issued with regard to proper admission of the students, Respondent University is not allotting the examination forms and as examination forms are not being allotted, Petitioner has filed this petition. Relief claimed for is that Respondent University be directed to allot the examination forms and permit the students of the Petitioner institute to appear in the B.Ed. Examination for the academic session in question. Shri Deepak Chandna, learned Counsel for Petitioner submitted by placing reliance on a judgment of the Supreme Court in the case of State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others, that once recognition and approval is granted by the NCTE as per NCTE Act, 1993, the University, the affiliating body which conducts the examination cannot withhold -grant of affiliation or issuance of examination forms. Inter alia contending that Petitioner is granted affiliation by Respondent University and after having granted affiliation, examination forms cannot be withheld, Petitioner seeks interference in the matter.

On notice being issued, Respondents University has filed return and in the return it is stated that the Petitioner institute is not granted recognition or approval by NCTE u/s 14 of the NCTE Act. It is further pointed out that University has not affiliated the Petitioner institute, only inspection has been conducted and finding various defects and deficiency provisional affiliation was recommended subject to condition that the Petitioner institute obtain formal order of recognition from NCTE. By bringing on record the inspection report Annexure R/1 Shri Tapan Trivedi, learned Counsel for Respondents argued that in the present case the Petitioner institute is not granted affiliation and therefore, relief as prayed for in this petition cannot be granted. That apart Respondents have raised serious question with regard to bona fide of Petitioner, it is pointed out that as per policy of the State Government followed by the University, students have to be admitted before cut of date as per admission rules and the list of candidates admitted has to be approved by the Commissioner, State Education Centre and forwarded to the University. In the present case the list of students is not properly verified by the State Education Centre. It is argued that the State Education Centre while forwarding the list Annexure R/7 wherein the name of the Petitioner institute is contained in serial No. 47. It is pointed out that list of students has to be verified by the Government, Education College, Gwalior. It is pointed out that the Government College of Education, Gwalior is not verifying the list of students as per rule. List sent by UPC received and registered AD are fabricated documents reliance on which cannot be placed. Shri Tapan Trivedi

argued that the admission is made in an illegal manner, list submitted is not properly approved and therefore, no relief can be granted to the Petitioner. Accordingly Shri Tapan Trivedi, learned Counsel for Respondents prays for dismissal of this petition.

I have heard learned Counsel for parties and perused the record. Even though there is serious dispute between the parties with regard to submission of approved list of students admitted by the Education Centre and duly certified and approved by the Principle Government P.G. College, Gwalior. Before adverting to consider this question it is necessary to evaluate the question as to whether Petitioner institute is recognized and approved according to law by the National Council for Teacher Education and granted affiliation by Respondent University, direction for permitting the Petitioner institute to participate in the process of examination can be issued by this Court only after the Petitioner institute is found to be duly approved and recognized by the NCTE and granted affiliation by the University. Petitioner has come out with a case that it is granted recognition and approval by NCTE for Session 2004-05 it was Annexure P/- 1 to P/4 respectively.

Before considering the question the statutory provision may be taken note of. Recognition of institutes are granted under Chapter 4, Section 14 of the National Council for Teacher Education Act, 1993 (hereinafter referred to as Act, 1993). Under Sub-section (1) of Section 14 of the Act of 1993 every institution offering or intending to offer a course or training in teacher education has to apply for recognition under this provision by moving an application to the Regional Committee concerned in the form and manner prescribed by regulation. Under Sub-section (3) after application is received by the Regional committee from any institute u/s 1 the committee after obtaining information from the institute concerned and such other particulars as it may consider necessary, has to be satisfied that the institute has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institute and for conducting the course and training in teacher education, if the committee comes to the opinion that the institute does not fulfil requirement as laid down in sub-clause, (a) of Sub-section (3) of Section 14 it may refuse recommendation to the institution however before passing an order of refusal opportunity of hearing has to be extended to the concerned institute. Under Sub-section (4) of Section 14 it is contemplated that every order granting or refusing recognition to an institution for a course or training in teacher education under Sub-section (3) is to be published in the official gazette and also communicated in writing to the appropriate examining body, the local authority or the State Government and the Central Government. It is clear from a perusal of Sub-section (3) and Sub-section (4) of Section 14 that recommendation is granted only if all the conditions contained in Sub-section (3)(a) are fulfilled and the recommendation is granted by order which is to be communicated to the examining body i.e. University and other authorities.

If so-called recognition and approval granted to the Petitioner as contained in Annexure P/1 to P/4 is examined, it would be seen that the aforesaid recognition are not the formal orders of recognition as contemplated in Sub-section (3) and Sub-section (4) of Section 14 Annexure P/1 is communicated dated 7th July, 2004 made by the Regional Director National Council for Teacher Education to the Commissioner/Director, M.P. State Council for research and training forwarding recommendation granted for the academic session 2004-05 and this recommendation is subject to condition that the College submits a list of staff and faculty duly approved by affiliating authority. This order indicates that order of recognition will be issued only after receipt of the list to the regional committee at Bhopal, this recommendation is not a formal order of recognition as contemplated u/s 14 it is only a provisional order of recognition subject to certain conditions. Nothing is pointed out in the rule which permit for grant of any such provisional recognition. Similarly recommendation for the session 2005-06 Annexure P/2 is also of similar nature and here also it is indicated that the formal order of recognition shall be issued only after scrutiny of list which is under process for the academic session in question 2006-07, the recognition Annexure P/3 issued on 25th July, 2006 is again a provisional one and in this order also it is indicated that formal order of recognition shall be passed only after scrutiny of staff list. Similar recognition for the year 2007-08 vide Annexure P/4 is subject of approval of staff list by University as indicated hereinabove all four order of recognition produced are not the formal order of recognition as contemplated under the statutory rules they are provisional and does not fall within the category of recognition as contemplated under Sub-section (3) and Sub-section (4), there is no order granting recognition as contemplated in Sub-section (4) of Section 14 nor any gazette notification is not issued, the provisional orders of recognition produced vide Annexure P/1 to P/4 do not fall in the category contemplated under Sub-section (4) of Section 14. Nothing is pointed out to this Court to show that even on the basis of so-called provisional recommendation, University can grant affiliation or the permission as prayed for in this petition can be granted. When the statute requires certain acts to be done in particular manner until and unless the said act is done in the manner as contemplated under the statute, this Court deviating from the statutory provision cannot hold the Petitioner institute to be recognized, that being so the contention of the Petitioner that they are recognized seems to be incorrect. Now the question would be as to whether Petitioner is affiliated by the University, the inspection report Annexure R/1 indicates that in the inspection conducted on 20th January, 2007 it was found that as per Clause 28(17) of the College Code permanent Principal, Teachers, Librarian, sports officer and other staff have not been appointed, no formal order of recognition is issued by NCTE and the list of teacher is not approved. Accordingly the recommendation made is that the institute may be granted provisional affiliation subject to institute producing formal order of recognition from the National Council for Teacher Education. It is clear from the aforesaid document Annexure R/1 that Petitioner is not even granted proper affiliation by the University the inspecting committee has only

issued provisional affiliation subject to grant of proper approval and recognition by the NCTE. That being so the totality of the circumstances that have come on record indicates that the Petitioner is not recognized by NCTE as per statutory rules, University has also not granted affiliation to the Petitioner institute in accordance with statutory rules, that being so in the absence of recognition and affiliation properly granted by the competent statutory authorities, relief and direction sought for by the Petitioner cannot be granted.

Principles laid down by the Supreme Court in the case of State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Ors. (supra) will only apply in a case where the recognition and approval by NCTE is granted u/s 14 of the National Council for Teacher Education Act, 1993 and in the absence of such order of recognition being granted, Petitioner cannot claim any benefit by invoking writ jurisdiction of this Court. This Court can only directed the University to issue examination forms and grant benefit of affiliation to the Petitioner institute after it is established that the institute is recognized and approved by the NCTE and University has also grant affiliation in accordance with statutory rules. Both aforesaid conditions have to be fulfilled by the Petitioner. In the present case the relief as prayed for cannot be granted. Merely because Petitioner have admitted the students and were permitted to participate in the process of examination in the previous academic session 2005-06 or 2006-07, this cannot be a ground for granting relief to the Petitioner, when it is established that statutory provisions and requirements are not fulfilled. Petitioner can seek relief from this Court only after it is established that requirement statutory in nature is complied with sympathetic consideration is not a ground for granting relief, contrary to statutory provision and therefore merely because students are admitted on the basis of provisional approval, recognition and affiliation, relief as prayed for cannot be granted by this Court. It is for the University concerned and the National Council for Teacher Education to permit the Petitioner to participate in the process of examination, in case they are satisfied that the Petitioner institute is entitled for the said benefit on the basis of provisional affiliation and recognition granted. It is not permissible for this Court to grant relief as prayed for once it is found that compliance of the statutory provision is not made. Accordingly finding no merit in the contention raised, petition stands dismissed with liberty to the Petitioner to approach the University and it is for the University to proceed in the matter as per their discretion.

Accordingly finding no case made out for grant of relief to the Petitioner, petition stands dismissed with the aforesaid liberty.