

(1998) 05 KAR CK 0025

In the Karnataka High Court

Case No : Writ Petition No. 31958 of 1997

Dr. B.R. Ambedkar Educational Trust (Registered),
Bhadravathi, Shimoga District

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 25-05-1998

Acts Referred:

Karnataka State Universities Act, 1976 — Section 53 (5)

National Council for Teachers Education Act, 1993 — Section 14, 15, 32

Citation : (1998) 4 KarLJ 537

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : Sri Jagadeeshachari, for the Appellant; Sri N.K. Ramesh, Additional Government Advocate, for the Respondent

Judgement

1. The petitioner-Trust appears to have made an application to the respondent-University, seeking its permission to start a new College offering a B.Ed. course. The request was processed and a Committee appointed by the University to inspect the proposed Institution. A recommendation was in due course submitted to the State Government by the University suggesting that the Institution, could be granted affiliation subject to certain terms and conditions. Upon consideration the Government have by its order dated 7th of October, 1997, declined to grant the requisite affiliation for as many as nine distinct reasons set out in the said order. These reasons inter alia include the alleged nonavailability of a proper building with the petitioner, the absence of recognition of the proposed institution by the National Council for Teachers Education and the alleged non-availability of the infrastructure necessary for running such an Institution. Aggrieved the petitioner has assailed in this writ petition the validity of the said order.

2. Counsel appearing for the petitioner argued that the primary reason behind the refusal of permission to establish the proposed institution was the absence of recognition by the NCTE. He submitted that in terms of Regulation 5 of the Regulations framed under the NCTE Act, the NCTE could grant recognition only

after the State Government had issued a "No Objection" to the petitioner. By insisting upon the grant of recognition even before granting a "No Objection", argued the learned Counsel, the State Government had tried to place the cart before the horse. He urged that the petitioner's application ought to have been treated as one seeking a "No Objection Certificate" from the State Government and considered on its merits thereby enabling the petitioner to file an appropriate application before the NCTE for the grant of recognition under the Act aforementioned.

3. Mr. Ramesh, learned Government Advocate on the other hand contended, that the petitioner had at no stage made any application to the State Government for the grant of a "No Objection" and that the Government had considered the request for affiliation on the basis of the recommendations made by the Kuvempu University but turned the same down having regard to the deficiencies pointed out in the impugned order. No fault could therefore, according to Mr. Ramesh, be found with the said order nor was the petitioner justified in expecting that the application made by it, would be treated as one seeking a "No Objection Certificate" from the State Government.

4. The application in question was made on the 15th of November, 1996, by which time, the Central Government had already notified the promulgation of National Council for Teacher Education Act, 1993 and appointed the First of July, 1995 as the date from which the same would come into force. The provisions of the Act, it is evident from the preamble are aimed at establishing a National Council for Teachers Education with a view to achieving a coordinated development of the Teacher Education system throughout the country. The provisions also aim at regulating the maintenance of norms and standards in the education system and matters connected therewith. Section 14 of the Act, provides that every Institution offering or intending to offer a course or training in Teachers Education after the appointed date may apply for grant of recognition under the Act, by making an application to the Regional Committee concerned in the form and the manner determined by Regulations. The expression "Teacher Education" has been defined by Section 2(1) to mean programmes of education, research or training of persons for equipping them to teach at pre-primary, secondary and senior secondary stages in the schools including non-formal education, part-time education, adult education and correspondence education. On receipt of any such application, the Regional Committee constituted under the Act, is empowered under sub-section (3) of Section 14 to grant the requisite recognition if it is satisfied that such Institution has adequate financial resources, accommodation, library, qualified staff, laboratory etc., and that it fulfills such other conditions required for proper functioning of the Institution for a course or training in teachers education as may be determined by the Regulations. In case however, the Committee is of the opinion that the Institution does not fulfil the requirements laid down, it may for reasons to be recorded refuse to grant any such recognition. In terms of sub-section (5) of Section 14, every Institution to which recognition has been refused is bound to discontinue the course in the

teachers education from the end of the academic session next following the date of receipt of the order passed under sub-section (3). Sub-section (6) of Section 14 requires every examining body to grant affiliation to the Institution where recognition has been granted or cancel the affiliation of the Institution where recognition has been refused. Section 16 of the Act, forbids every Examining Body from granting affiliation whether provisional or otherwise to any Institution or holding examinations or for a course or training conducted by any Institution, unless such Institution has obtained recognition from the Regional Committee concerned u/s 14 or permission for starting a new course or training u/s 15. In exercise of its powers under Sections 14, 15 and 32 of the Act, the National Council for Teacher Education has framed what are known as National Council for Teachers Education for recognition, the manner for submission, the determination of conditions for recognition of the Institution and permission to start new course or Training Regulations 1995. Regulation 5 of the said Regulations, provides that every application for recognition shall be made to the Regional Committee concerned in the prescribed form, whereas, sub-regulation (e) of the said Regulation stipulates that every Institution intending to offer a course or training in teachers education which was not functioning immediately before 17th August, 1995, shall submit the application for recognition together with a No Objection Certificate from the State or the Union Territory in which the Institution is located.

5. A close reading of the provisions of the Act, and the Regulations mentioned above, would show that the power to grant recognition to any course or training in teachers education offered by any Institution is exclusively conferred upon the Authorities constituted under the Act. It is also evident that once the Competent Authority under the Act grants the requisite recognition the Examining Body concerned is on receipt of any such order, bound to grant affiliation to the Institution so recognised for any such course. The Act or the Regulations do not conceive of any permission for starting or recognising any such course of study from the State Government. All that is required under Regulation 5(e) is that the Institution concerned, must submit the application for recognition to the Competent Authority under the Act together with a No Objection Certificate from the State Government concerned. The proper course for the petitioner to follow was to apply to the State Government for the grant of a No Objection Certificate for establishing an Institution offering the B.Ed. course of study and then apply for recognition of the Authorities under the Act, in accordance with the provisions thereof. Instead of doing so, the petitioner appears to have acted under a totally mistaken belief that the permission to establish any such Institution could be granted by the State Government. As a matter of fact, he did not even make an application to the State Government directly for any such permission. All that the petitioner did was to make an application to the Kuvempu University apparently seeking affiliation for the proposed Institution. The University also appears to have processed the said application oblivious of the provisions of the NCTE Act culminating in the submission of the recommendations to the State Government

which were disposed of by the Government u/s 53(5) of the Karnataka State Universities Act, 1976. Neither the University nor the State Government appear to have noticed the changed legal position following the promulgation of a Central enactment, according to which, the question of adequacy of financial resources and availability of accommodation, library, qualified staff, laboratory facilities etc., were all matters that fell within the purview of the Regional Committee in terms of Section 14(3) of the Act. Whether or not all these requirements were sufficiently complied with to justify the recognition of the proposed course or training programme in teacher education, offered by any existing Institution or Institution to be established in future was therefore a matter that could be considered only by the Authorities under the said Act. The State Government or for that matter the University to which any such Institution may have applied for affiliation was not concerned with the said aspects nor could an affiliation to the proposed Institution be refused on the ground of deficiency in any one of those infrastructural requirements after the NCTE had granted recognition in its favour. The scheme of the Central Act evidently is that once the Authorities constituted under the Act are satisfied about the adequacy of the requisite infrastructural facilities needed for offering any course in teachers education and once based on any such satisfaction the Institution is recognised by the Authorities under the said Act, the Examining Body concerned, has no option but to grant the requisite affiliation u/s 14(6). This is evident even from the provisions contained in Section 16 of the Central Act, according to which no Examining Body can grant affiliation whether provisionally or otherwise unless the Institution concerned has obtained the recognition from the Regional Committee. It is therefore obvious that for determining the adequacy of the infrastructural pre-requisites for starting an Institution offering a particular course in teacher education the Authorities under the Act have been constituted as the final arbiters making the grant of affiliation by the Examining Body concerned a necessary corollary to any such recognition. The scheme underlying the Central enactment does not leave any scope for the Authorities under any State enactment on the subject including the Karnataka Universities Act, 1976 to refuse affiliation in derogation of an order of recognition from the NCTE and the provisions of Section 14(6) of the NCTE Act. The Parliament having evinced interest in the subject relating to teachers education and made specific provisions regarding the same, the Central legislation would have an overriding effect qua any pre-existing State law. Contradiction for any such purpose need not be only between the provisions made in the two enactments. It would be sufficient if the field is covered by the Central legislation as in the position in the present case -- Thirumuruga Kirupananda Variyarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others, . In the circumstances therefore I have no hesitation in holding that the University as also the State Government have totally misdirected themselves in carrying out the process of independent evaluation of the infrastructural facilities available with the petitioner for starting the proposed course. What the University or the State Government ought to have done was to draw the petitioner's attention to the

provisions of the Central enactment and to leave the question of recognition to the Authorities under the said Act.

6. The only other question that remains to be examined is whether the petitioner's application could or ought to have been considered as a request for grant of a No Objection Certificate, in terms of Regulation 5 of the Regulations mentioned earlier. It was contended by the Counsel for the petitioner that the Government ought to have considered the said application only from the point of view of issuing a No Objection Certificate and passed an appropriate order on the same. I do not however see any substance in that submission. The application made by the petitioner did not make any reference to either the Act or the Regulations framed thereunder. It was not even addressed to the State Government nor was any request made for the grant of "No Objection" in the application in the context of the requirements of the Regulations. In the circumstances I see no reason why the Government ought to have on its own treated the application addressed to the University as one addressed to it for the issue of a No Objection Certificate. Just because a liberal view taken in the matter could have possibly resulted in any such application also being considered as a request for the issue of a "No Objection Certificate" does not mean that the State Government committed any error in not following that course. If the petitioner wanted the Government to consider the issue of a No Objection Certificate for its proposed Institution, there is no reason why it should not have made a specific request to that effect. Having failed to do so, the petitioner should thank itself for the resultant delay. I however, see no reason why the petitioner cannot now make a fresh application to the State Government for the issue of a "No Objection Certificate" in terms of Regulation 5(e) of the Regulations referred to earlier. Interest of justice would in my opinion substantially be served if I direct that if the petitioner makes any such application to the State Government within two months from today, the Government shall consider the same and pass appropriate orders on the subject expeditiously and as far as possible within a period of six months from the date the application is received.

7. The writ petition is accordingly disposed of with the above direction leaving the parties to bear their own costs.