

(2008) 03 PAT CK 0051

In the Patna High Court

Case No : CWJC Nos. 2407 and 11964 of 2000

Fakhruddin Ali Ahmad Teachers" Training College and Another	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 28-03-2008

Acts Referred:

Citation : (2008) 03 PAT CK 0051

Final Decision : Allowed

Judgement

Navin Sinha, J.—The institution and those, who were its students in 1995-1996 and 1996-1997 Sessions for the B.Ed course and on completion thereof passed the examination held in April, 1998 the results whereof were declared in November, 1998, are before this Court in CWJC No. 2407 of 2000 aggrieved by the orders dated 10.6.1999, 28.6.1999 and 29.2.2000, by which the affiliation granted by the Lalit Narayan Mithila University (hereinafter referred to as "the University") to the petitioner-Institution for the years in question has been withdrawn with retrospective effect and admission of students in those Sessions, the examination, results and marks sheet thereof as also the provisional certificate granted have been cancelled with retrospective effect.

2. This was a sequel to the orders of the National Council for Teacher Education Act, 1993 (hereinafter referred to as "the NCTE Act") assailed in CWJC No. 11964 of 2000 by the Institution dated 4.6.1999 reaffirmed on 14.6.1999 refusing to grant recognition to the Institution, dispensing with the statutory provisions of hearing under Sections 14 and 17 of the N.C.T.E. Act and the order dated 30.3.2000 ordering that degrees marks sheet and other certificate of the B.Ed. Course awarded to the students by the University pursuant to the B.Ed. Examinations of 1998 and the subsequent academic Sessions be declared invalid. The appeal against which was rejected on 24.4.2000. A post decisional hearing granted led to the order of confirming the earlier rejection dated 19.1.2001.

3. Learned Counsel for the petitioners assailed the impugned orders to submit that the Respondents could not with retrospective effect cancel the affiliation and

permission for the period that it de facto existed and declare as illegal what was legal when done.

4. That the Institution had duly applied for recognition before the State Government which kept the matter pending. On coming into force of the N.C.T.E. Act the Institution applied for recognition thereunder. The affiliation was granted by the Lalit Narayan Mithila University based on which permission was granted by the Eastern Region Committee of the N.C.T.E. with permission to continue intake of students for 1998-1999 Session when the same came to be annulled retrospectively. That the retrospective cancellation of the permission by the N.C.T.E. based on which the impugned orders were issued was ex parte in nature which was in teeth of the statutory provisions and post decisional hearing given in appeal was of no consequence. The rejection of the appeal was also, therefore, illegal. That marks sheet and provisional certificate had also been issued to the candidates for the Sessions in question by the respondent University and who had now obtained employment, settled in life and whose career was now being jeopardized.

Reliance has been placed on judgments of the Apex Court in (2007) 6 SC 145 (Sunil Kumar Parimal and Anr. v. The State of Bihar and Ors.) Sunayana Devi Vs. State of Bihar and Others, Shishir Saurabh Vs. Bhupendra Narayan Mandal University and Others, Bhawanand Jha Vs. B.N. Mandal University and Others and B.N. Mandal University Vs. Md. Mustaque Alam and Others, .

5. No counter affidavit has been filed on behalf of the University and N.C.T.E in CWJC No. 11964 of 2000, though the writ application was filed in March, 2000 and has been listed on five occasions and directions for filing of counter affidavit. The only counter affidavit is on behalf of the State-Respondents 1 & 2. Counter affidavit has been filed on behalf of the N.C.T.E. in CWJC No. 11964 of 2000.

6. Learned Counsel for the University and the N.C.T.E. urged that there was no recognition to the Institution by the N.C.T.E. at any time and that Section 14 of the N.C.T.E. Act prohibits imparting of education by an unrecognized Institution. The Institution was therefore not competent to hold examination and no affiliation could have been granted for the purpose by the University u/s 16 of the N.C.T.E. Act, after the appointed date i.e. 17.8.2005. The grant of affiliation by the University for the Sessions 1995-1996 and 1996-1997 being contrary to law was of no avail to the petitioners. In absence of such recognition, the marks sheet and provisional degree granted by the University was bad from its very inception. The action of the N.C.T.E. in granting permission was contrary to the Act. That a first information report has already been lodged against the University and its officials. Learned Counsels lastly submitted that the illegality of the University in granting affiliation and holding of the examination were undefendable. They relied upon Division Bench orders of this Court in L.P.A. No. 453 of 2001 (Satish Kumar and Ors. v. The V.C. Bhupendra Nr. Mandal University) and analogous cases disposed on 5.1.2007 and L.P.A. No. 109 of 2007 (Suresh Kumar Roy and Anr. v. The State of Bihar and Ors.) and analogous

cases. Reliance was further placed on State of Tamil Nadu and Others Vs. St. Joseph Teachers Training Institute and Another, and L. Muthukumar and Another Vs. The State of Tamil Nadu and Others, .

7. The counter affidavit of the State Respondent urged that the Institution was never granted recognition. That an F.I.R. had been lodged against the Vice Chancellor of the University and others by the Cabinet Vigilance Department. That when the illegalities came to light the impugned orders were issued.

8. The facts of the case that emerge are that the Institution applied for recognition to the State Government in accordance with the then existing statutory requirements in the prescribed form along with the statutory fee in 1989. This contention in the writ petition along with the assertion that despite constitution of an inspection team in 1990 by the State Government, no further action was taken by it is not denied in the counter affidavit of the State Respondents. Pending the recognition matter, the N.C.T.E. Act came into effect from 17.8.1995. On 14.8.1997 the institution applied afresh for recognition to the Eastern Region Committee under the same. The N.C.T.E. on 20.3.1999 issued public notice extending the statutory time of six months for making of applications for recognition by existing Institutions citing the difficulties being faced for reason of the mammoth exercise and extending the date for such applications by existing Institutions to 31.3.1999. On 29.9.1997 the N.C.T.E. inter alia required the petitioner- institution to produce affiliation order from the University. The University on 9.2.1998 granted affiliation for the Sessions 1995-1996 and 1996-1997 under orders of the Vice Chancellor. This came to be confirmed by the Syndicate of the University at its meeting on 26.2.1998. The Institution submitted the necessary documents to the N.C.T.E. on 25.8.1998 when it was granted permission on 21.9.1998 by the N.C.T.E. inasmuch as the N.C.T.E. allowed it to continue for the current Session as per the Rules of the University including intake capacity until final disposal of the application. Source for the exercise of this power by the NCTE can be traced in Section 15 of the N.C.T.E. Act. Subsequently, by letter dated 6.11.1998 the N.C.T.E. clarified that since affiliation was not available to the institution from the University for the Session 1997-1998 it could continue till final disposal of its application for the 1998-1999 Session. On 23.3.1999 the University granted affiliation for the 1997-1998 and 1998-1999 Sessions in anticipation of approval of the Syndicate.

9. In this manner, the students of 1995-1996 and 1996-1997 Sessions completed their course for which examination was held in April, 1998, a period during which the N.C.T.E. had permitted the institution to continue with fresh intake of students. The N.C.T.E. finally denied recognition to the Institution by an ex parte order dated 4.6.1999 affirmed on 14.6.1999 and cancelled the aforesaid examination and results thereof on 23.3.2000. The post decisional hearing yielded no results.

10. In this factual scenario what emerges as an admitted position is the grant of affiliation by the Syndicate of the University to the Institution for the 1995-1996,

1996-1997 Sessions and permission by the N.C.T.E. allowing intake of students for 1998-1999 Session also. The fundamental question, therefore, is that if the admissions were taken, the course completed during a period when there was provisional affiliation and permission and the examination was also held at a time when provisional permission had been granted by the N.C.T.E. also, can the results of students of the said Sessions be cancelled with retrospective effect on the grounds that the affiliation and permission granted were subsequently withdrawn retrospectively. Will it now lie in the mouth of the Respondents to challenge their own actions to now declare as illegal what was legal at the time it was done with their approval. The affiliation and permission was granted till final disposal of the application for recognition and was not made conditional on the final order that may be passed on the recognition issue.

11. The University has not disputed or denied that classes were held during the aforesaid Sessions. Roll numbers allotted, examination held, marks sheet issued and provisional degree granted.

12. In the case of Sunil Kumar Parimal (*supra*) relied upon by the petitioners. The institution had a valid recognition from the State Government for the Sessions in question. The examinations for the sessions were delayed. In the meantime, the N.C.T.E. Act came into force. Holding of examination in absence of recognition under the new Act was denied. The Supreme Court directed the holding of the examinations.

13. In the case of Mustaque Alam (*supra*) the Institution in question had been granted recognition by the State Government and was affiliated to the University. On that basis it had applied for recognition under the N.C.T.E. Act which allowed the College to continue the B.Ed. course until the final disposal of its application. In that background, the Division Bench held that the Institutions were allowed to continue the B.Ed. course and provisional recognition was granted for the relevant period. The period for which affiliation had been granted had to be treated as valid in law for conducting the B.Ed. course. In the case of Shishir Saurav (*supra*) it was held that once the University conducted the examination, the students could not be denied the benefit of their labour for lapses of the University more particularly when they had passed the examination placing reliance upon a decision of the Supreme Court in *Shri Krishnan Vs. The Kurukshetra University, Kurukshetra*, . In the case of Sunaina Devi, a Bench of this Court held that the results could not be withheld in the B.Ed. course for the Session when there was provisional affiliation and that the subsequent withdrawal of the same would not invalidate the course attended and the results declared at the time of a valid affiliation, retrospectively. That the students could not be blamed if subsequently for any reason the Institution is disaffiliated or derecognized. The case of Bhawanand Jha does not help the petitioners in the present controversy.

14. Reliance by the Respondents on the judgment in the case of *State of Tamil Nadu and others* (*supra*) is of no avail because it related clearly to what were

unrecognized Institutions and there was no provisional affiliation or provisional permission therein as is the case presently. In the case of L. Muthukumar (*supra*) the recognition of the Institution in question was withdrawn subsequently by virtue of a decision rendered by the High Court based on allegations of fraud subsequent to the public examination. The petitioners therein also sought to question the derecognition six years later.

15. The Division Bench order in the case of Suresh Kumar Roy (*supra*) is also of no avail to the Respondents as it related to an Institution which was not recognized and the claim was being made 15 years later.

16. Crucial for consideration is the Division Bench judgment in Satish Kumar case (*supra*) strongly relied upon by the University and the N.C.T.E. The appeals therein fell in two categories. The first related to Institutions which obtained orders for affiliation and recognition by fraud and interpolation in documents and their retrospective cancellation of affiliation and recognition. Rejecting the challenge, it was held that fraud vitiates everything. In view of the documents of affiliation and recognition being forged by interpolation no relief could be granted. That the decision of this Court in CWJC No. 4166 of 2001 (*Mithila Minority College v. L.N. Mithila University and Ors.*) confirmed by the Division Bench made a distinction between non-existent and fraudulent Colleges and such Colleges which may not have been fulfilling the requirements of infrastructure and may have had the same below norms. The Institutions of the first category were denied relief while Institutions of the second category were granted relief by annulment of the retrospective orders.

17. This Court finds it very difficult to appreciate the argument of the University and the N.C.T.E. in virtually questioning and challenging their own decision and seeking a declaration of illegality of their own actions for what was legal when done under their orders.

18. In the present case, the Institution was granted affiliation by the University affirmed by the Syndicate for the Session 1995-96 and 1996-97. In 1998, provisional permission was granted by the N.C.T.E. u/s 15 of the N.C.T.E. Act to continue intake of students for the 1998-99 Session. The examinations for the former Sessions were held in April, 1998 and results published in November 1998, marksheets issued and provisional certificates granted. There are no allegations of fraud or interpolation for the purpose of affiliation or permission. That the infrastructure may not have been adequate shall bring the present Institution in the second category of the Institutions considered by the Division Bench.

19. Satisfied with the same in response to its query dated 29.9.1997 the N.C.T.E. granted provisional permission to the Institution by allowing it to continue and admit students for 1998-1999 Sessions. Not only was there thus valid permission for the Sessions 1995-1996 and 1996-97, but the delayed examination for those Sessions was also held at a time when there was valid permission granted by the

N.C.T.E. Act, along with affiliation for the period by the University.

20. There is, thus, no distinction between the case of the petitioners and the second category of the Institution considered in the case of Satish Kumar (*supra*) in respect of which the orders of retrospective cancellation and derecognition were set aside.

21. The examinations were held in April, 1998, results published in November, 1998. The impugned orders were issued in June, 1999 and February, March, 2000. The petitioners came to this Court with alertness in March, 2000. Whatever may be the fate of the management of the Institution, this Court cannot shut its eyes to the plight of those who attended the course in the Institution at the time of affiliation and valid permission, obtained provisional degrees, secured employment and now in the year 2008 are settled in life as teachers with family responsibilities. To accept the contention of the Respondents, for their lapses, such third persons must now be thrown on the streets with all its consequences. This Court is not persuaded to do so, especially when the students appear to have been made unsuspecting pawns with no allegations of collusion etc. against them.

22. The orders of the N.C.T.E. dated 4.6.1999 and 14.6.1999 on which its subsequent orders are founded have been issued without compliance of the statutory compulsion for prior hearing to the institution in question under Sections 14(3)(b) proviso and Section 17(1) of the NCTE Act. The non compliance of statutory provisions will therefore not lend validity to a post decisional hearing. On basis of such orders the impugned orders of the University have been issued. The law is settled that if the original order is invalid all subsequent orders are invalid.

23. The question therefore arises of the nature of the order to be passed by this Court with regard to the retrospective operational aspect of the impugned orders and the prospective operational aspect of the same. The severance of the order is a norm to be considered if one part of the order can exist independently sans the other. If it can be so done this Court should give fullest effect to the same and sever the order. Reference for the purpose may be made to the judgment of the Supreme Court reported in *R. Jeevaratnam Vs. The State of Madras*, .

24. In light of the discussions contained hereinabove this Court, therefore, holds that the retrospective cancellation of affiliation and permission for the Sessions 1995-1996 and 1996-1997 and cancellation of admission, examination, marks sheet and provisional degree for the said Sessions under the examination held in April, 1998 are illegal. The impugned orders dated 4.6.1999, 14.6.1999, 23.3.2000, 24.4.2000 and 8.1.2001 of the N.C.T.E. and the consequential orders of the University and the State respondents dated 26.8.1999, 29.2.2000 and 10.6.1999 in so far as the said Sessions are concerned is quashed. This shall be notwithstanding the non compliance of Sections 14(3)(b) and 17(1) of the NCTE Act.

25. The orders dated 4.6.1999, 14.6.1999, 24.4.2000 and 19.1.2001 of the N.C.T.E. can be clearly separated from its prospective aspect inasmuch as they themselves acknowledge that the Institution was directed not to admit any students for the Sessions 1999-2000 by order dated 24.2.1999 only thereafter the order dated 23.3.2000 cancelling the examination and results for the 1995-96 and 1996-97 was passed with retrospective effect.

26. There is thus a clear distinction to that extent with regard to the aspect of retrospective annulment for the Sessions 1995-1996, 1996-1997 and the subsequent refusal to grant prospective recognition. In so far as the prospective aspect is concerned, this Court considers it necessary to refer to Sections 14 Sub-clause (3)(b) proviso and Section 17(1) of the NCTE Act which incorporate the prior requirement for compliance with the principles of natural justice as a statutory compulsion. In the facts and circumstances of the present case, it is an admitted position that this has not been done and has been breached making such an order per se illegal. Therefore, a post decisional hearing is of no consequence. This Court holds that the order of the N.C.T.E. dated 4.6.1999, 14.6.1999, 24.4.2000 and 19.1.2001 are not sustainable in their present form to the extent that it refuses recognition prospectively and are accordingly set aside. To that extent, the matter is remanded to the N.C.T.E. to issue notice to the petitioning Institution and after hearing arrive at a fresh determination in accordance with law.

27. That this order shall not have any effect on the management of the Institution in so far as the Vigilance case is concerned, or on the issue of recognition/affiliation of the college by the State Government, the University or the N.C.T.E which shall both be determined in accordance with law.

28. CWJC No. 2407 of 2000 is allowed. CWJC No. 11964 of 2000 is remanded with directions.