
(2008) 04 CAL CK 0010
In the Calcutta High Court
Case No : Writ Petition No. 15329 (W) of 2007

Gopsai Avinandan Sangha and Others	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision : 16-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226
National Council for Teacher Education Act, 1993 — Section 14, 14(1), 14(3), 14(4), 14(6)
Vidyasagar University Act, 1981 — Section 57(2)

Citation : (2008) 3 CHN 578 : (2009) 6 SLR 568

Hon'ble Judges : Aniruddha Bose, J

Bench : Single Bench

Advocate : Kashi Kanta Maitra, Subir Sanyal and Biswajit De, for the Appellant; P. Saha, for University and Asha G. Gutgutia, for the Respondent

Final Decision : Allowed

Judgement

Aniruddha Bose, J.—The prayer of the petitioners in this writ petition is for a direction on Vidyasagar University and its officers to affiliate the college of the petitioners for conducting B.Ed, course. The writ petitioners before me are a society registered under the provisions of the West Bengal Societies Registration Act, 1961, the college itself, being Bengal College of Teacher Education, and the Principal of that college. The petitioner No. 1 being the society had applied for recognition of this college for conducting B.Ed, course with the National Council for Teacher Education (Council in short). On 24th May, 2007 an order was passed by the Council in terms of Section 14(3)(a) of the National Council Teacher Education Act, 1993 granting recognition to the said college. I shall refer to this statute henceforth as the "1993 Act". The college is to run as a self-financed institute for which the State Government has already issued No-objection certificate. In this certificate which was communicated to the Regional. Director, the Council under a memorandum dated 18th June 2007 it was indicated:

This "NOC is, however, subject to the strict observance of the NCTE guidelines by

the proposed college and to the fulfillment of necessary terms and conditions issued amended from time to time in this behalf by the University concerned/ State Govt. any other regulatory authority having jurisdiction in this matter.

2. The petitioner society on 16th June, 2007 had made an application for affiliation with the Vidyasagar University. This application was made in terms of Statute 37 of the Vidyasagar University First Statutes, 1983 framed in exercise of the power conferred by Section 57(2) of the Vidyasagar University Act, 1981. The inspection team of the University visited the institute set up by the petitioner society on 25th June, 2007, but no final decision on affiliation was given.

3. On 11th July, 2007, the university had issued an advertisement in a bengali daily inviting applications for admission in B.Ed, course for the academic session 2007-08 in two colleges in the district of Purba Medinipur, but the college of the petitioner No. 1 did not figure in that advertisement. On the same date, i.e. 11th July, 2007, the petitioner No. 1 sent a communication requesting (the university authorities to grant affiliation, which did not yield any result. It is at this stage the petitioners approached this Court, with prayer for a direction upon the Vidyasagar University to grant affiliation to the colleges of the petitioners.

4. The university has contested this writ petition by filing affidavit-in-opposition, whereas the stand of the Council has been broadly in support of the petitioners' case for grant of affiliation, as the petitioners' case was anchored on the recognition granted by the Council. The case of the university as disclosed in the affidavit, in substance is that the college lacks adequate infrastructure for conducting the course.

5. Mr. Kashi Kanta Maitra, learned Senior Advocate appearing for the petitioners has argued that upon enacting of the 1993 Act, if an institution is granted recognition by the Council for conducting a course for "teacher education", then there is no scope for a university to refuse affiliation. He has primarily relied on the provisions of section 14(6) of the 1993 Act in support of his submissions, and cited the decision of the Hon'ble Supreme Court in the case of State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others, .

6. Ms. Asha Gutgutia, learned Advocate appearing for the council, has supported the petitioners' case on the aspect of primacy of the Council on the issue of granting recognition to institutions covered by the 1993 Act. She has submitted that while examining the question of recognition of an institution for conducting B.Ed, course, the authorities verify the quality of infrastructural facilities, and recognition is granted only after the authorities are satisfied on this count. Upon such recognition being granted, there is no scope on the part of the university to re-examine the adequacy of infrastructural facilities for the purpose of grant of affiliation. She submitted that under the provisions of Section 14(6) of the 1993 Act, the University is bound to grant affiliation to an institute recognized by the Council. In support of her submissions, she has relied on two authorities being a

decision of a Division Bench of this Court in the case of Anjan Bhattacharya and Another Vs. State of West Bengal and Others, and also on a Bench decision of the High Court of Himachal Pradesh in the case of Shimla Education Society and Trust Vs. State of H.P. and Another, .

7. The case of Ms. Debjani Sengupta, learned Advocate appearing for the university, is that the power or authority of the university to enquire into the question of adequacy of infrastructural facilities is derived from Statutes 42 and 43 of the Vidyasagar University First Statutes, 1983. This statute has been framed in exercise of power conferred under the provisions of Section 57(2) of the Vidyasagar University Act, 1981. The provisions of Statutes 42 and 43 are set out below:

Statute 42

On receipt of an application for affiliation of a college within the due date and prima facie complying with all the requirements of Statute 41, the Council for undergraduate studies concerned shall

- (i) direct an enquiry to be made by the Inspector of Colleges and such competent person or persons authorised by it in this behalf into the matters stated in the application;
- (ii) call for such further information from the applicant and make such further enquiry as it may consider necessary in the matter;
- (iii) satisfy themselves that there is in the college building adequate accommodation both as regards the number of class rooms and the space and cubic space of each class room.

Statute 43

If upon receipt of the report of the enquiry and of further enquiry and further information, if any, the Executive Council is satisfied that there are suitable buildings and provisions for all other requirements necessary to ensure the maintenance of the standard of the proposed educational programme, it may, after considering the views of State Government in this respect, by order grant to the college, subject to the terms and conditions of (affiliation laid down in these Statutes, affiliation sought for with effect from such academic year and for such period as may be specified in the order:

Provided that an application for affiliation may be withdrawn by the applicant or applicants at any time before an order has been passed by the Executive Council in this regard.

8. In the affidavit-in-opposition of the university, affirmed by one Balendu Mazumdar, Deputy Registrar, the reasons have been disclosed for non-granting of affiliation. It has been stated that using the same infrastructure, an engineering college is functioning, and no proper demarcation has been made between the buildings from which B.Ed, course would be conducted and the one from which

engineering course would be pursued. Shortcomings have been pointed out as regards quality of the library and laboratory as also the building facilities. Complaint has been made as regards selection of teaching staff, as also that of the Principal in course of hearing. Ms. Sengupta produced certain documents at the time of hearing to demonstrate that the petitioners' college was also shown as a teaching staff of another institute. The university, she submitted, brought these deficiencies to the notice of the Council by a communication dated 12th July, 2007 (copy of which has been made Annexure R-4/3 to the affidavit-in-opposition), but she submitted that the Council had ignored the said communication indicating the shortcomings of the institute for conducting B.Ed, course.

9. She also brought to my notice certain provisions of the regulations framed laying down the procedure for grant of recognition, by the Council in exercise of power u/s 32(2) of the 1993 Act, as also certain provisions of the order passed for recognition of the college to contend that such recognition was not absolute. It was always open to University to withhold affiliation on cogent grounds, she submitted.

10. In the order granting recognition, it has been stipulated :

"Further, the recognition is subject to fulfillment of all such other requirements as may be prescribed by other regulatory bodies like UGC and State Govt. etc; wherever applicable.

11. Clause 10 of the notification dated 27th December, 2005 [memo No. F 49-42/2005-NCTE (N&S)] which lays down the procedure for grant of recognition on which reliance was placed by the learned Advocate for the university reads as follows:

...An institution shall make admission only after it obtains unconditional letter of recognition from the Regional Committee concerned, and affiliation from the examining body....

12. It is in the light of these facts and legal provision I am to examine the prayer of the writ petitioners. Before I do so, it would be appropriate, in my opinion to discuss briefly the background of the National Council for Teacher Education. This body was established u/s 3 of the 1993 Act, which is an enactment of the Union legislature. The power of the Parliament to enact statutes regulating the field of teacher education can be traced to Entry 66 of List 1 to the Seventh Schedule of the Constitution of India. Subjects referred to in Entry 66 is set out below:

Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

13. In Section 2(d) of the 1993 Act, the expression examining body has been defined to mean "University agency or authority to which an institution is affiliated for conducting examinations in teacher education qualifications.

14. Section 14 of the 1993 Act stipulates.

RECOGNITION OF INSTITUTIONS OFFERING COURSE OF TRAINING IN TEACHER EDUCATION

(1) Every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations:

Provided that an institution offering a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.

(2) The fee to be paid along with the application under Sub-section (1) shall be such as may be prescribed.

(3) On receipt of an application by the Regional Committee from any institution under Sub-section (1), and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall

(a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by regulations, pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations; or

(b) if it is of the opinion that such institution does not fulfil the requirements laid down in Sub-clause (a), pass an order refusing recognition to such institution for reasons to be recorded in writing:

Provided that before passing an order under Sub-clause (b), the Regional Committee shall provide a reasonable opportunity to the concerned institution for making a written representation.

(4) Every order granting or refusing recognition to an institution for a course or training in teacher education under Sub-section (3) shall be published in the Official Gazette and communicated in writing for appropriate action to such institution and to the concerned examining body, the local authority or the State Government and the Central Government.

(5) Every institution, in respect of which recognition has been refused shall discontinue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under clause (b) of Sub-section (3).

(6) Every examining body shall, on receipt of the order under Sub-section (4).

- (a) grant affiliation to the institution, where recognition has been granted; or
- (b) cancel the affiliation of the institution, where recognition has been refused.

15. It is apparent from the provisions of Section 14(3) of the Act that before issuing the order granting recognition, the Council is required to be satisfied on the aspects of adequacy of infrastructural facilities of the institution seeking recognition. The manner in which such enquiry shall be conducted is specified in Clause 7 of the said regulations. Once such inspection as contemplated in the said regulations is completed and the Council is satisfied that the institution fulfills the standards and norms set down by them, the examining body, being the university in this case, does not have any power or authority to embark upon another enquiry on this aspect. In terms of the provisions of Section 14(6) of the 1993 Act, they are bound to grant affiliation to the institution. This issue is no more *res integra*, and is covered by the judgment of the Hon'ble Supreme Court in the case of *State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Ors.* In this judgment, it has been held:

78. The respondents have stated that they have spent huge amount and incurred substantial expenditure on infrastructure, library, staff, etc, and after satisfying themselves about the necessary requirements of law, permission had been granted by NCTE. If the said action is set aside on the basis of the decision of the State Government, irreparable loss will be caused to them. Since in our view, the order passed and action taken by NCTE cannot be termed illegal or unlawful and the State Government could not have passed the impugned order refusing permission on the ground of the so-called "policy" of not allowing new B.Ed, college to be opened, it is not necessary for us to delve further into the said contention.

79. Before parting with the matter, we may state that at one stage, the High Court has observed that:

"In so far as the" university is concerned, considering the provisions of Section 15 of the NCTE Act, one permission has been granted u/s 14 the university is bound to grant affiliation in terms of the Act, Rules and Statutes. Section 83 requires the university to grant affiliation only after permission is granted u/s 82 of the Maharashtra Universities Act. To that extent the provisions of Sections 82 and 83 are inconsistent with the provisions of the NCTE Act and are null and void.

80. In our opinion, the observations that the provisions of Sections 82 and 83 of the Maharashtra Universities Act are "null and void" could not be said to be correct. To us, it appears that what the High Court wanted to convey was that the provision of Sections 82 and 83 would not apply to an institution covered by the 1993 Act. As per the scheme of the Act, once recognition has been granted by NCTE u/s 14(6) of the Act, every university ("examining body") is obliged to grant affiliation to such institution and Sections 82 and 83 of the University Act do not apply to such cases."

16. As regards Ms. Sengupta's submission that even under the order granting recognition and as per the said regulations, the university's authority to apply its own standard is preserved under the Statute 42 and 43, in my opinion such power or authority has to be construed in a restricted manner. It is true that as per the aforesaid provisions, the university can examine as to whether the institution has suitable buildings and other infrastructural facilities to ensure maintenance of the standard of the proposed educational programme. But in my opinion, since "teacher education" is an occupied field, covered by a Central legislation, once the authorities constituted under the Central statute is satisfied about the infrastructural facilities, there can be no question of an overlapping examination by an authority constituted under a state act. In the event the university seeks to impose its own standards or facilities provided by the institution which have been found by the Council to be adequate, that would not be permissible.

17. I do not think the university can justify its action withholding the affiliation of the college from where B.Ed, course is proposed to be conducted by the petitioners. The expression "other requirements" used in the clause contained in the order grant in recognition to which reference has been made in the earlier part of this judgment, clearly reflects that the obligation of the institution under the said clause is to meet requirements which have already not been addressed to by the Council. The State Government has already issued their consent letter in favour of the petitioners and no violation of any norm specified by the UGC had been brought to my notice. Allegations have been made in the affidavit-in-opposition as regards breach of norms in the appointment of the principal and the teachers. But verification on this aspect also comes within the jurisdiction of the Council, as it is evident from the provisions of Sub-clauses (11)and(12) of Clause 7 of the said Regulation, text of which is reproduced below:

11. 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.

12. The institution concerned, after appointing the requisite faculty/staff shall put the information on its official website and also formally inform the Regional Committee concerned. The Regional Committee concerned shall then issue a formal unconditional recognition order.

18. The provisions of cause 10 of the said regulations also does not assist the university. This clause stipulates that an institution can make admission only after obtaining unconditional letter of recognition from the Regional Committee of the Council, and affiliation from the examining body, being the university in this case. The obligation of the institution to obtain affiliation is not in dispute in this case. The petitioners have come up with the complain that their affiliation is being withheld arbitrarily. This writ petition, in substance, is for the purpose of effective compliance of the provisions of the said clause.

19. It was also argued on behalf of the university that since the provisions of the First Statutes are also statutory provisions, and these provisions are not under challenge in this writ petition, it is well within the power and authority of the university to apply these provisions testing the eligibility of the institution for the purpose of affiliation.

20. But in view of the ratio of the decision of the Hon''ble Supreme Court in the case reported in State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others, ,¹ I do not think the aforesaid statutory provisions could be construed in that manner. Once recognition is granted under the provisions of Section 14(6) of the 1993 Act, in respect of such recognised institutions, the provisions of the First Statutes cannot apply vis-a-vis the subjects which has been examined and addressed to by the Council. In such a situation, the statute on which the University is relying on being the creature of a State legislation must make way for the 1993 Act. This is the opinion of the Division Bench of the Hon''ble High Court of Himachal Pradesh in the case of Shimla Education Society and Trust (supra), with which I respectfully agree.

21. Ms. Sengupta sought to distinguish the decision of the Hon''ble Supreme Court in the case of State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya (supra), arguing that in that case, the vires of the State enactment was under challenge, whereas in the present case, the petitioners have not questioned the legal validity of the First Statutes. I am of the opinion, however, that it is not necessary to challenge the provisions of the State legislation or the statutes framed under it to establish the primacy of the 1993 Act. There are two authorities of this Court itself, being Tulshi Bakshi and Anr. v. State of West Bengal and Ors. W.P. No. 21101 (W) of 2005) decided on 19.4.2006 by an Hon''ble Division Bench and Anjan Bhattacharya v. State of West Bengal (supra) in which the primacy of the 1993 Act has been recognised. In these circumstances, following the decision of the Hon''ble Supreme Court reported in State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others, , I hold that once recognition has been granted by the Council u/s 14(6) of the 1993 Act, every university is obliged to grant affiliation to such institution and any provision of the First Statute coming in the way of granting of affiliation shall be deemed not to apply to such cases. In other cases, the said provisions of the university statutes would be applicable.

22. The case made out by the university was that they had brought to the notice of the Council the deficiencies of the institution but the Council was not acting upon their complain. But this stand, in my opinion, is also not justifiable. It was always open to the university to question the decision of the Council before the appropriate forum, but till the order of recognition remains in force, in view of the provisions of Section 14(6) of the 1993 Act, the university is bound to grant affiliation.

23. Moreover, some of the deficiencies pointed out by the university are remediable in nature, and the recognition once granted can also be revoked

under the provisions of Section 17 of the 1993 Act. As regards the allegation that the Principal of the college is serving as a teacher of another college, that is essentially a factual dispute, and I do not wish to enter into such disputes in course of a proceeding under Article 226 of the Constitution of India. The statute vests the Council with the power and authority to examine such factual issues. In the present case, it was submitted by Ms. Gutgutia that her clients granted the order of recognition after being satisfied on all the relevant factors. There is no further scope of re-opening these issues in this proceeding.

24. In the writ petition, the petitioners prayed for direction to the university to affiliate the college so that they could admit students for the 2006-2007 session. That session has already come to an end.

25. In these circumstances, I allow the writ petition directing the respondent Nos. 4 and 5 to grant affiliation to the college of the petitioners and take all consequential steps so as to ensure admission of the students for the 2008-09 Session.

26. The writ petition stands allowed in the above terms. There shall, however, be no order as to costs.

Let urgent photostat certified copy of this judgment be made available to the parties forthwith in due compliance of the requisite procedure.