

(2002) 09 AHC CK 0046

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 25417 of 2002

Gyan Singh and Others

APPELLANT

Vs

Allahabad University and Others

RESPONDENT

Date of Decision : 11-09-2002

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 14

Citation : (2002) 5 AWC 3907 : (2003) 1 UPLBEC 477

Hon'ble Judges : S.K. Singh, J

Bench : Single Bench

Advocate : Ajit Kumar, for the Appellant; P.S. Baghel, for the Respondent

Final Decision : Allowed

Judgement

S.K. Singh, J.—These are two petitions on the same controversy and therefore, they are being taken up together. For the purpose of convenience Writ Petition No. 25417 of 2002 filed by Gyan Singh and another is being taken up as leading case. Other writ petition is Writ Petition No. 17573 of 2002 filed by Neelima Srivastava and others in which counter and rejoinder affidavit has also been exchanged. Counsel in both the cases on rival sides are the same. As the pleadings are complete for the disposal of the writ petitions, as requested by the learned Counsel, the matter is being heard and is being finally decided.

2. Learned Counsel Sri Ajit Kumar who appears for the petitioner, Sri P.S. Baghel, learned Advocate who appears for the University and Sri Vinay Saran who appears for the National Council of Teachers Education have been heard.

3. By means of the writ petition filed by Gyan Singh and another which is Writ Petition No. 25417 of 2002 prayer has been made for quashing of the order dated 30th May, 2002 passed by the respondent No. 1 (Annexure I to the writ petition). By the aforesaid order, a decision has been taken that permission cannot be accorded to the petitioner's College to run B.Ed. classes. The prayer of the writ petitioners Neelima Srivastava and others of Writ Petition No. 17573 of

2002 is for a direction to the respondents to admit the students in B.Ed. classes for the session 2002-2003.

4. There happens to be a training College known as Kali Prasad Training College in district Allahabad, hereinafter referred to as the College which has been imparting teachers education. Similarly there happened to be various other training colleges in the State. Like our State in other States also there were similar teachers education for which L.T. courses were running. It appears that Union of India after comprehensive study over the matter feeling the requirement of the public and for effective co-ordination all over India in the matter of education for teachers, enacted the Law as provided in National Council for Teacher Education Act, 1993, hereinafter referred to as the Act. To carry out with the effective control and uniformity in teachers education a body known as National Council of Teachers Education (N.C.T.E.) was founded which was assigned the job of having teachers education all over the country. For effective and uniform education it was also decided to start Teacher Education in U.P. and thus all the colleges and the Institute were to apply for grant of recognition and permission from N.C.T.E. for running B.Ed. classes in their respective colleges in place of L.T. course. Kali Prasad Training College also applied for grant of recognition and permission from N.C.T.E. for running B.Ed. classes upon which N.C.T.E. made necessary survey, inspection, enquiry regarding eligibility granting permission and recognition to run B.Ed. classes. It is claimed that required permission was granted on 7.10.1999 to run the classes for B.Ed. education upto 80 seats for the year 1999-2000. It is claimed that despite of recognition by the N.C.T.E. respondents 1 and 2 arbitrarily tried to get the matter delayed by having their own inspection panel and it is thereafter the Executive Council of the University decided to accord affiliation and permission on 17.1.2000 for one year. It is in this sequence it is stated that the College has run the session 2000-2001 and gave 95% result. The respondent University in the garb of non-fulfillment of certain condition deliberately delayed the matter and did not permit running of the session 1999-2000 and 2001-2002. The College has been writing to the University for completing the proceeding for the session 2001 -2002 but on one ground or the other for alleged non-compliance of certain formalities and conditions as prescribed by the N.C.T.E. matter was delayed and now by the impugned order dated 30th May, 2002 permission to admit the student in the College for B.Ed. course has been finally refused.

5. Learned Counsel for the petitioner submits that after enactment of the National Council of Teachers Education Act and constitution of N.C.T.E. having jurisdiction throughout India for teachers education and matter connected with it, the University authorities have no role in the matter not to permit running of B.Ed. classes and admission of the students. It is submitted that the Act being special Act dealing with the subject it has to override the whims of the University authorities. Learned Counsel submits that all the conditions as have been prescribed by N.C.T.E. has been fulfilled and there is recognition by the N.C.T.E. which has not been modified and varied in any manner and therefore,

respondent University has no right not to permit the students to be admitted in B.Ed. classes. It is pointed out that the pretext of the respondent University of their being no full time qualified teachers is totally mis-conceived in as much as the objection in this respect relates for interim period as for making permanent appointment requisition has already been sent by the College on 4.9.2000 to the Higher Education Commission. Learned Counsel submits that even the University in the selection committee appointed five teachers in the same manner whose details have been given in Para 5 of the rejoinder affidavit as filed in Writ Petition No. 17573 of 2002. Learned Counsel submits that the inaction on the part of the University in not permitting the admission to the student in B.Ed. classes is completely arbitrary and whimsical. Learned Counsel in support of the submission that University has no right to refuse admission to the student in the College recognised by the N.C.T.E., has placed reliance on the decision as has been given in (2001) 2 UPLBEC 1891 , State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, , Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another, Java Crockul Educational Trust v. The Commissioner and Secretary to Government Department, Thiruvananthapuram, Kerala State and Anr.; (2000) 2 UPLBEC 1340, Upendra Rai v. State of U.P. and Ors. and Writ Petition No. 44250 of 1999, The Board of Management of D.B.S. College, Kanpur and Anr. v. State of U. P. and Ors.; decided on 12.12.99.

6. Sri P. S. Baghel, learned Advocate who appears for the Allahabad University in response to the aforesaid submission argues that the College has not fulfilled the condition of recognition regarding Library, Laboratory facilities and full time teachers as required by the N.C.T.E. and therefore, permission to admit students in B.Ed, classes cannot be given. It is further emphasised that as the College has not fulfilled the norms as provided by the N.C.T.E. and the condition as has been mentioned in the recognition letter itself and also in the subsequent correspondences, the College is not entitled to proceed with the B.Ed. classes. In this connection learned Counsel has taken the Court to the Annexures I and II to the counter affidavit as has been filed in the writ petition of Neelima Srivastava and others to demonstrate that the condition as prescribed by the N.C.T.E. has to be fulfilled by the College.

7. Sri Vinay Saran learned Advocate who appears on behalf of the N.C.T.E. submits that norm has been clearly provided in the N.C.T.E. Act and the College has to abide by those norms in the event it is claimed that B.Ed. course is to be permitted in the College.

8. In view of the aforesaid submission as has come from both sides and in view of the fact as stated in the counter affidavit as has been filed on behalf of the University authorities, it appears that the controversy revolves in a very narrow compass. On a close reading of the detail as has been mentioned in the counter affidavit filed on behalf of the University authorities it is clear that only objection

on their behalf happens to be that the College lacks the conditions so prescribed by the N.C.T.E. and all the required facilities and, full time teachers are not available in the College and therefore, College cannot be permitted to have B.Ed. classes. In Para 18 of the counter affidavit it has been clearly stated that the University has no personal fight with the functions of the College and the University only desires that the N.C.T.E. guidelines; Rules and regulations be followed by the College and quality teacher education be effectively imparted. At this stage the provisions as are contained in the Act will be useful to be referred. Chapter IV of the Act deals with the recognition of teacher education institutions. Section 14 of the Act under Chapter IV is hereby quoted--

"14. Recognition of institutions offering course or training in teachers 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 fulfills 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 the opinion that such institution does not fulfill 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."

9. A reading of the aforesaid section makes it clear that every institution offering or intending to offer the course or training in teacher education will have to satisfy the norms and requirement so prescribed in the Act. The requirement as contained in this section makes it clear that the institution must have adequate financial resources, accommodation, qualified staff, library, and laboratory etc. It is clear that the Regional Committee so constituted by the N.C.T.E. after getting full details and after necessary inspection/enquiry takes a decision for granting or refusing the recognition to an institution which shall be published in the Official Gazette and is then communicated in writing to such institution and to the examining body about the order granting or refusing recognition as provided in Sub-section (4) of Section 14 as quoted above.

10. It is thereafter provision as made in Sub-section (6) of Section 14 comes into picture on which emphasis has been laid by the learned Counsel for the petitioner. The aforesaid Sub-section states that every examining body shall on receipt of the order under Sub-section (4) grant affiliation to the institution where recognition has been granted. In view of the aforesaid submission of the learned Counsel for the petitioner, after grant of recognition by the N.C.T.E. there is simple formality of affiliation by the examining body and examining body do not have any power of refusing affiliation appears to have substance. The submission of the learned Counsel for the petitioner also gets assistance in view of the provisions as are contained in Section 17 of the Act. For the purpose of convenience Section 17 of the Act is also hereby quoted-

"17. Contravention of provisions of the Act and consequences thereof.-(1) Where the Regional Committee is, on its own motion or on any representation received from any person, satisfied that a recognised institution has contravened any condition subject to which recognition under Sub-section (3) of Section 14 or permission under Sub-section (3) or Section 15 was granted, it may withdraw recognition of such recognised institution for reasons to be recorded in writing :

Provided that no such order against the recognised institution shall be passed unless a reasonable opportunity of making representation against the proposed order has been given to such recognised institution."

11. The aforesaid provisions as contained in Section 17 of the Act makes it clear

that the Regional Committee, on its own motion or on any representation received from any person, if is satisfied that the recognised institution is contravening any of the provisions of this Act or the Rules or Regulations, order made or issued thereunder or any condition subject to which recognition under Sub-section (3) of Section 14 was granted it may withdraw the recognition of such recognised institution for reasons to be recorded in writing and that too after affording reasonable opportunity in the matter.

12. There appears to be no dispute at this stage that recognition so granted by the N.C.T.E. has not been withdrawn on the ground of violation of any condition subject to which recognition was granted, as has been pleaded by the University authorities in their counter affidavit as well as during the course of the submission. The University authority also on being satisfied with the fulfillment of initial requirement admittedly permitted session 2000-2001 to be completed in which the College gave 95 percent result. The dispute about non-availability of full time teacher also appears to be diluted, which appears in the light of the submission from the respondents side itself as well in view of the development as has been detailed in the rejoinder affidavit filed in Writ Petition No. 17573 of 2002, in which a clear stand has been taken by giving the facts in details in respect to appointment made by the University itself and also for regular appointment in the College having been requested vide requisition sent by the College on 4.9.2001; In view of the recognition granted by the N.C.T.E. so far other conditions/requirement of library and laboratory facility and other requirements will be deemed to have been available. The provisions as are contained in the Act are quite clear and they are ready to meet the situation i.e. violation of any provisions as contained in the Act, Rules and Regulations and even the violation of any condition upon which recognition has been granted. On the fact and circumstances as there happens to be dispute about the non availability of full time teacher in the College and about the library and laboratory facilities, as has been raised on behalf of the University authority this Court feels that in the light of various details as has given before this Court it is the matter of adjudication relating to factual aspect which this Court may not be justified in adjudicating and giving a positive finding either way in this petition, but at the same time this Court feels that inspection into various details and taking of the decision adverse to the interest of the College at the level of the University authorities is also not to be justified. In view of exhaustive provisions as is contained in the Act it appears to be the main concern of the N.C.T.E. who have been given this special power under the Central enactment. The provisions of the Act are very much clear, that in the event of any violation upon which running of the B.Ed. classes in a particular College was permitted, can be enquired and adjudicated at the instance of anybody and therefore, in the event there is any lapse on the part of the College, it is justified on the part of the University to approach the N.C.T.E. who is competent to deal with the matter in a complete and effective manner, either way. In view of the aforesaid the action on the part of the University authorities in not permitting petitioner's College to ran B.Ed.

classes by granting affiliation at their level which is a command u/s 14 of the Act is not justified but at the same time it appears to be just and proper that to have a final decision about the continuation of the recognition so granted by the N.C.T.E. on fulfillment of the required condition, the matter may be relegated to the N.C.T.E. to take appropriate decision and to issue necessary orders to the University authorities as well. It will be open for either of the parties i.e., petitioner, the Management of the College or the University authorities themselves to approach the N.C.T.E. for giving appropriate direction, considering various factors relating to availability of the full time teacher in the College in the light of the requisition as sent to the Higher Education Commission, library and laboratory facilities and other requirements so that claim of the College and the petitioners about running and continuance of B.Ed. classes in the College may finally set at rest. It will be concern of the N.C.T.E. to take appropriate decision by speaking order within a period of three weeks from the date of receipt of representation detailing complete facts in support thereof at the instance of either of the parties, as referred above, so that in the coming session itself in the event direction/ decision comes suiting to the College, no prejudice may occasion to anybody.

13. In view of the aforesaid analysis both the petitions succeed and they are allowed in the light of the direction as contained in this judgment