
(2007) 07 MP CK 0126
In the Madhya Pradesh High Court
Case No : W. P. No. 3350 of 2007

I.I.T.S. College, Guna

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 31-07-2007

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 14, 14(4), 14(6)

Citation : (2008) 1 MPLJ 245

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : B.P. Singh with Alok Sharma, for the Appellant; Smt. Ami Prabal, D.A.G. and Tapan Trivedi, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Menon, J.

Challenging orders, Annexure P/1 dated 20th June, 2007 and the order, Annexure P/2 dated 18th May, 2007 passed by the Commissioner, Higher Education, M.P., Bhopal, Petitioner has filed this petition.

Petitioner has established a B. Ed., college in district Guna and on June 27, 2005 recognition was granted to the Petitioner by the National Council for Teacher Education (hereinafter referred to as the NCTE) vide Annexure P/5 for the academic session 2005-06. However, this recognition was subject to certain conditions which were to be fulfilled mainly pertaining to affiliation by the university and competency to be evaluated for conducting the course by the Petitioner. According to the Petitioner, thereafter, recognition has been continued and for the current academic session recognition is granted by NCTE. However, the grievances of the Petitioner in this petition is that even after recognition was granted by NCTE, the Department of Higher Education, M. P., Bhopal is not granting permission to establish the course by the institution as a result, the university concerned is not processing the application of the Petitioner for

affiliation. Inter alia contending that no objection certificate (hereinafter referred to as NOC) or approval from the State Government is not now necessary after the recognition is granted by NCTE u/s 14(6) of the National Council for Teacher Education Act, 1993 (hereinafter referred to as the Act of 1993), Petitioner has filed this petition and placing reliance on a judgment of the Supreme Court in the case of State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and others, AIR 2006 SCW 2048, it is argued that action of the State Government in refusing to grant permission after the recognition is granted by NCTE u/s 14(6) is unsustainable, therefore, prayer made is to quash the aforesaid orders and direct the Department of Higher Education of the State of Madhya Pradesh to grant permission/NOC to the Petitioner - institute. In the alternate, it is argued that the grounds indicated in the orders, Annexure P/1 and Annexure P/2 for refusing to grant NOC/permission is also misconceived inasmuch as the reasons indicated in the orders pertaining to the non-availability of 03 acres of land and building by the Petitioner is a incorrect assessment of fact. By placing reliance on various sale deeds and documents to show availability of adequate land and entitlement of the Petitioner to run the college in a rented premises on the ground that permission was granted by the NCTE. Even on merits, it is argued that the reasons indicated for refusing to grant NOC/permission is unsustainable, therefore, petition has to be allowed and the Respondents be directed to grant NOC/permission to the Petitioner for the current academic session,

Smt. Ami Prabal, learned Deputy Advocate General for the State submitted that with a view to check the mushrooming of B. Ed., institutions in the State in a totally uncontrolled manner and with a view to protect the interest of the students who are seeking admission in these institutions, the State Government has formulated guidelines regarding opening of new private colleges/new faculties/new curriculum and continuing the running courses for the academic session 2007-08 before granting recognition/NOC/permission. It is pointed out by her that the requirement of land and building etc., indicated in the aforesaid guidelines are in conformity with the norms and standards prescribed by the NCTE and the provisions of the Act of 1993. It is further pointed out by her that as per the norms laid down by NCTE as contained in Annexure P/7, the infrastructural facilities and institutional facilities, etc., the guidelines have been issued by the State Government and it is being ensured that these norms are maintained and it is only thereafter that the Government is granting permission/NOC. It is contended by her that the NCTE itself while granting permission and recognition to the institute of the Petitioner has directed that all the norms and standards pertaining to infrastructure staff, and curriculum transaction etc., as laid down by the NCTE are to be followed and the institution has also been directed to seek affiliation from the university/competent authority before starting the course and admitting the students. It is pointed out by her that as the procedure followed by the State Government is only to keep a check on the institutions and the action is taken only to ensure fulfilment of these criterions

laid down by the NCTE, there is no illegality in the action of the State Government in seeking fulfilment of these criteria. In this regard, she invites my attention to the letter, Annexure P/5 dated June 27, 2005 issued by the Regional Director, NCTE. This letter is addressed to the Commissioner/Director, Madhya Pradesh State Council of Research and Training, Rajya Shiksha Kendra, Bhopal and in second para of this letter, the Commissioner is directed to instruct the institute to adhere to the norms prescribed by the NCTE regarding eligibility criteria for admission, infrastructure, staff and curriculum transaction, etc., She submits that NCTE itself has instructed the State Government, the Petitioner cannot have any grievance in the matter. Accordingly, she has submitted that the State Government can still keep a check over such institutions by issuing guidelines and ensuring that the requirements under the statutory provisions are complied with and in doing so, the State Government has not committed any illegality or acted arbitrarily.

I have heard learned Counsel for the parties and perused the record.

In the case of Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Ors. (supra) even though the Supreme Court has held that once recognition is granted by the NCTE u/s 14(6) of the Act of 1993, the universities and other authorities cannot refuse permission or affiliation, this Court cannot lose sight of the fact that the aforesaid principle laid down by the Supreme Court could be applicable only if the permission/recognition granted by the NCTE is without any restriction and after the NCTE itself is satisfied that all norms laid down under the statutory rules are fulfilled by the institution. In a given case if NCTE has granted provisional recognition and permission subject to fulfilment of certain conditions to be considered by the university or other competent authority, the principle laid down in the aforesaid case will not apply to such cases. If permission granted to the Petitioner by the NCTE as contained in Annexure P/5 is seen, it would be very clear that the permission granted is only a formal recognition, the letter stipulates that the recognition is subject to the condition that the college submits list of staff/faculty duly approved by the Registrar of the affiliating university/competent authority before commencement of the academic session. It is only thereafter formal orders of recognition will be issued. It is further indicated in the said letter that the institution has to adhere to the norms prescribed by the NCTE relating to eligibility criteria for admission, infrastructure, staff and curriculum transaction, etc., to the standards laid down by the NCTE and continuous maintenance of the same as mandatory and binding on the institution.

From the aforesaid, it is clear that the recognition so granted to the Petitioner by the NCTE itself is provisional in nature subject to compliance with certain norms prescribed by the NCTE itself. There is nothing on record to indicate that the NCTE or any other competent authority have conducted inspection and granted unequivocal recognition on satisfaction or fulfilment of norms, in fact, the recognition granted to the Petitioner by the NCTE is not u/s 14(6) of the Act of 1993. There is nothing on record to indicate that a formal order of recognition u/

s 14(6) of the Act of 1993 is granted by the NCTE in favour of the Petitioner, that being the principle laid down by the Supreme Court in the case of Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Ors. (supra) would not apply in the present case as the NCTE has only granted recognition subject to fulfilment of certain conditions to be verified and has left the same to the university and other competent authorities to verify and take action, that being so, there is no irregularity in the action of the State Government and the university in seeking adhere to the norms fixed in the guidelines. A perusal of the Act of 1993 and requirement of the norms and standards for secondary teacher education programme laid down by the NCTE as contained in Annexures P/6 and P/7, it would be clear that the norms and guidelines laid down by the State Government are only repetition of the guidelines already laid down by the NCTE. That being so, I am not inclined to subscribe to the contentions advanced by the learned Counsel for the Petitioner that the State Government and the university have no authority to insist on fulfilment of any further condition for giving permission. The principle laid down by the Supreme Court in the case of Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Ors. (supra) would only apply if it is established in a given case that the permission/NOC issued by the NCTE is after proper inspection and it is established that all the requirements as required by the Act of 1993 and the guidelines issued by the NCTE as contained in Annexure P/7 are fulfilled. If the NCTE itself has issued a conditional recognition subject to verification of the norms by the affiliating university or other competent authority. The State Government can always insist upon fulfilment of the norms by the institutions seeking recognition and it cannot be said that the university or the State Government has committed any illegality in the matter of giving approval before commencement of the academic session.

The principle laid down by the Supreme Court in the case of Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Ors. (supra) will apply only in such cases where the recognition granted is in accordance with the provisions of Section 14(4) and 14(6) of the Act of 1993. No Gazette notification is published and order granting the recognition u/s 14(4) or 14(6) thereof is available on record. In the present case, while granting the provisional recognition vide Annexure P/5 dated June 27, 2005, the Regional Director, NCTE has addressed the letter to the Commissioner/Director, Madhya Pradesh State Council of Research and Training, Rajya Shiksha Kendra, Bhopal, i.e., the competent authority of the State Government and the instructions issued to this authority is that the institute should be instructed to adhere to the norms prescribed by the NCTE relating to eligibility criteria for admission, infrastructure, staff and curriculum transaction, etc., and to ensure that the standards laid down by the NCTE and continuous maintenance of these norms and standards is mandatory and binding on the institution. The effect of this letter is that the provisional recognition is addressed to the competent authority of the State Government and the further fact that power has been delegated by the NCTE to see that the institute adherence to the norms before formal recognition is granted by the NCTE u/s 14(4) and (6) of the

Act of 1993, that being so, the State Government has power to insist upon the observance to the norms prescribed by the NCTE and for the said purpose, policies and guidelines have been framed by the State Government. In that view of the matter, it cannot be said that the direction given by the State Government is illegal or contrary to statutory provisions of law.

The contention advanced in this regard has to be considered from a different angle also. The State Government is answerable to the general public which has put the Government in power and with a view to ensure that the institutions in the State, particularly, B. Ed., colleges are established as per the required norms of the NCTE, the State Government has the authority to keep a check on the institutions which want to impart education in a particular course in the State of Madhya Pradesh. For the said purpose, the State Government is entitled to exercise control as per the provisions of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973. As the exercise of power by the State Government is in the interest of the public and is not found to be contrary to any statutory provision, I see no error in the action taken by the State Government in doing so. The State Government may be prevented from exercising such a power if in a given case the facts available on record indicate that a formal order of recognition is granted by the NCTE u/s 14(6) of the Act of 1993 after being satisfied that all norms as prescribed are fulfilled. In such a case, the principle laid down by the Supreme Court in the case of Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Ors. (supra) may be applicable.

However, in the facts and circumstances of the present case, there is much force in the contentions advanced by the learned Counsel for the Petitioner to the effect that on merit, the State Government has not adverted to the factual aspect of the matter properly and on extraneous consideration without application of mind and without scrutinizing the record properly, impugned orders, Annexure P/1 and Annexure P/2 have been passed. Various sale deeds and documents produced by learned Counsel for the Petitioner indicates that in the year 2004 itself, the Petitioner - society has acquired the land more than the prescribed limit and as per the norms of NCTE, and the institution is entitled to function in a rented premises for at least three years. From the material available on record, the Petitioner is entitled to continue in a rented premises for a period of three years as the cut off period prescribed in this regard is not over for the present. That being so, the reasons indicated in Annexures P/1 and P/2 for rejection of the application for NOC/permission to the Petitioner is prima facie unsustainable being contrary to the material available on record. At this stage, it is relevant to take note of the permission/NOC granted by the State Government for the academic session 2005-06 and 2006-07 as contained in Annexure P/8 dated 5th November, 2005 and 30th May, 2006 to the Petitioner. From the aforesaid orders, it is clear that for the previous academic sessions, Petitioner is shown to have fulfilled all the norms prescribed. If that be so, it is not known as to how the norms which were fulfilled in the previous academic sessions has changed for the academic session 2007-08. This matter requires consideration by

the State Government.

According, this Court is of the considered view that prima facie, the competent authority of the State Government has not followed the guidelines formulated in the case of the Petitioner properly and has rejected the application in a mechanical way without conducting proper enquiry and without examining the documents on record. In that view of the matter, the orders, Annexure P/1 dated 20th June, 2007 and Annexure P/2 dated 18th May, 2007 have to be quashed and the matter has to be remanded back to the State Government for further consideration in accordance with law.

Accordingly, the orders, Annexure P/1 dated 20th June, 2007 and Annexure P/2 dated 18th May, 2007 are quashed. As the academic session is to commence and counselling is to start very soon and students have to be admitted, so also, taking note of the fact that the Petitioner was granted NOC/permission in the previous academic session, 2006-07, this petition is disposed of with the following directions:

- (i) The competent authority of the State Government shall re-examine the matter again and for the said purpose, opportunity of hearing and liberty to file the necessary documents be granted to the Petitioner and after examining the same objectively pass a speaking order in the matter;
- (ii) The aforesaid exercise be concluded within a period of fifteen days from the date of filing of a certified copy of this order and appearance of the Petitioner along with requisite documents before the competent authority;
- (iii) In the meanwhile, in case, the process of admissions commences and counselling for admission of the students is started, Petitioner - nstitute shall be granted liberty to participate in the counselling and admit the students provisionally subject to the final decision that may be taken by the State Government or NCTE in the matter of granting formal order of recognition as per Section 14(6) of the Act of 1993 and the institution shall ensure that each and every student seeking admission is informed about pendency of the matter before the State Government; and
- (iv) The competent authority of the State Government or the agency conducting the counselling shall be free to display at the counselling centre, the information regarding non-grant of recognition and pendency of the same before the State Government for information of the students.

Accordingly, Petition stands allowed in part to the extent indicated hereinabove and disposed of without any order so as to cost.

Petition allowed.