

(2015) 03 MP CK 0025

In the Madhya Pradesh High Court

Case No : Writ Petition Nos. 3290, 3742, 3743, 3744, 3745, 3746, 3747 and 3748/2015

Jatashankar Shiksha Prasara Samiti and Others

APPELLANT

Vs

Dr. Hari Singh Gour University and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226

National Council For Teacher Education Act, 1993 — Section 14(1), 14(5), 4(f)

Citation : (2015) 03 MP CK 0025

Hon'ble Judges : C.V. Sirpurkar, J.; Rajendra Menon, J.

Bench : Division Bench

Advocate : D.K. Dixit and Manoj Chansoriya, Learned Counsel, for the Appellant; Shobha Menon, Learned Senior Counsel and Rahul Choubey, Advocates for the Respondent

Final Decision : Disposed off

Judgement

1. As common questions of law are involved in all these writ petitions, and as the main questions canvassed have been already been considered and decided by this Court in W.P. No. 12126/2013 - Ekta Shiksha Prasara Samiti, Chhatarpur Vs. Dr. Harisingh Gaur University, by an order passed on 3.12.2014, all these petitions are being disposed of by this common order. For the sake of convenience the documents, material and pleadings available in the record of W.P. No. 3290/2015 is being referred to in this order.

2. Petitioners are either registered societies running educational institutes for the purpose of imparting B.Ed/D.Ed Education or societies running institute imparting the said course of studies. It is common ground that all the institutes or the society concerned which is running the institute were granted recognition by the National Council for Teachers Education in accordance to the requirement of Section 14(1) of the National Council for Teachers Education Act. It is also a fact that all the institutes are situated either in the District of Tikamgarh or

Chhatarpur in the State of Madhya Pradesh. It is also an admitted fact that initially the Dr. Hari Singh Gaur University, Sagar was a University registered and functioning under the provisions of the M.P. Vishwavidhyalaya Adhiniyam and was granting affiliation to all the institutes functioning in various districts like Sagar, Chhatarpur, Tikamgarh etc.. It is also an admitted position that by virtue of Central Universities Act, 2009, the Dr. Hari Singh Gaur University become a Central University w.e.f. 15 th January 2009 and all colleges functioning in the State of Madhya Pradesh within the District of Sagar, Tikamgarh, Chhatarpur etc. which were earlier granted affiliation by the Dr. Hari Singh Gaur University in accordance to the provisions of M.P. Vishwavidhyalaya Adhiniyam, 1973 are now receiving affiliation from the Central University except certain institutes like the present one which came into existence after 15.1.2009.

3. In view of the provisions of the Central Universities Act as the respondent University which became a Central University was not in a position to grant affiliation to various institutes, the State of Madhya Pradesh established a new university namely the Maharaja Chatrasal Bundelkhand University, Chhatarpur under the M.P. Vishwavidhyalaya Adhiniyam for catering to the needs of the Districts in question and for granting affiliation and imparting education in the district. However, as the Maharaja Chatrasal Bundelkhand University has not become functional, a situation arose with regard to affiliation of the institutes functioning in these districts. The dispute came to this Court in the form of various writ petitions which was decided by a by common order on 3.12.2014 in the case of Ekta Shiksha Prasar Samiti, Chhatarpur, this Court found that by a communication dated 20 th May, 2014 the University through the Director of College Development Council and the Commissioner of High Education, Government of Madhya Pradesh has entered into arrangement/understanding for grant of temporary affiliation for the academic session 2014-2015 to about 19 colleges which included the present institutes and colleges. Taking note of this circular and various other aspects of the matter, all the petitions were allowed and the respondent University was issued with the following directions:-

"10. Accordingly, we issue following directions:-

This petition is allowed. The action of the respondent No. 1 University in refusing affiliation to the petitioner's institute for the period in question is quashed. It is directed that the University shall proceed to consider the case of the Institutes for grant of affiliation for the periods in question. Pass appropriate orders for affiliation in accordance to rule within a period of 30 days from the date of receipt of certified copy of this order and in case affiliation is granted after the institute is found to have fulfilled all the conditions, result of the students who have been admitted in the college and whose examination has been taken by virtue of interim order shall be released. It is made clear that if the institute fulfills all the conditions necessary for grant of affiliation, they should be granted ad hoc affiliation for the years in question, provisionally, till a regular arrangement is made by the State Government." 4. Now it is also common

ground that an SLP filed against this Order before the Hon"ble Supreme Court has been dismissed as withdrawn and a review application filed has also been rejected by this Court. Now the present society/institute whose name appears in the list of 19 colleges admitted to the benefit of temporary/interim affiliation for the academic session 2014-2015, feel aggrieved by non consideration of their case for affiliation, therefore, they have filed these petitions.

5. On notice being issued respondents have filed reply and Smt. Shobha Menon, learned Senior Counsel appearing for the University tried to indicate certain technical ground to say that the petitions are not maintainable. As far as merit of the matter is concerned, her contention is that the letter dated 20th May, 2014 based on which the earlier writ petition was decided, has been withdrawn by the University vide Annexure R3/2 on 23.1.2015 and therefore, her main submission is that in view of Annexure R3/2 now benefit identical in nature as was granted in the case of Ekta Shiksha Prasara Samiti, Chhatarpur, cannot be granted to the petitioner. She further invited our attention to Section 4(f) of the Central Universities Act, the provisions of the National Council for Teachers Education Act and various provisions of the Central Universities Act to say that no affiliation can be granted now by this University after 15.1.2009. She invited our attention to the following judgments - State of West Bengal and Others Vs. Debasish Mukherjee and Others, ; State of Orissa and Another Vs. Mamata Mohanty, , a judgment of Uttranchal High Court to say that based on misplaced sympathy and contrary to statutory provisions when the law prohibits grant of affiliation by the university, no mandamus can be issued by this Court. She vehemently argued that merely because in an illegal manner some benefit has been granted to some University, petitioner cannot claim benefit of the same. She argued that Director of College Development Council who had issued dated 20th May 2014 has acted in an unauthorized manner and without due sanction of the University, contrary to the statutory provision as this letter was issued, it has been withdrawn vide Annexure R-3/2 and therefore, petitioner cannot claim any benefit now.

6. Shri D.K. Dixit and Shri Manoj Chansoriya, learned counsel appearing for the petitioners refuted the aforesaid and argued that withdrawal of letter is nothing but an arbitrary and mala fide action. Once the institutes in question who are petitioners before this Court were granted the benefit of temporary/interim affiliation vide letter dated 20th May, 2014 and when in pursuance to the same the State Government permitted the institute to conduct counselling and students were allotted under the centralized counseling by the department of Higher Education, Madhya Pradesh, now the University in the midst of session cannot say that affiliation is withdrawn or cannot be granted based on letter Annexure R3/2. They invited our attention to Section 14(5) of the NCTE Act to say that affiliation granted cannot be withdrawn in the midst of session even if it is withdrawn the session has to be permitted to be completed. That apart, it is pointed out by the learned counsel for the petitioners that respondents are arbitrarily and in an unreasonable manner denying the benefit to the petitioners.

We have considered the rival contentions and we find that because of the peculiar situation created in certain district of Madhya Pradesh, Government of Madhya Pradesh and University took up the matter and a ad hoc and temporary arrangement was made which was considered by this Court in detail in the case of Ekta Shiksha Prasar Samiti, Chhatarpur (supra) and directions as contained herein above, was issued by this Court. This Court was conscious of the fact that the Central University has started functioning a new regional University namely Maharaja Chatrasal Bundelkhand University was created for the district in question but because the newly created University has not become functional taking note of all these circumstances, in the case of Ekta Shiksha Prasar Samiti, Chhatarpur (supra) directions were issued. Directions have been followed in various cases and now with regard to the petitioners' institute it is said that they cannot take benefit of the order passed in the case of Ekta Shiksha Prasar Samiti, Chhatarpur (supra) because the letter dated 20th May, 2014 based on which temporary affiliation was granted, has been withdrawn. We are unable to accept such a contention of the University. A office of the University issued the letter on 20th May, 2014 and the petitioners' institute is included in the list of 19 institutes which were to be granted temporary or ad hoc affiliation. Based on this promise given by the University through its Director of College, Development Counsel the State Government permitted the institute to participate in the process of admission for the academic session 2014-2015, conducted centralized counseling admitted the students and now in the fag end of the academic session, the University has withdrawn the letter on ground contrary to the statutory requirements. If that was so, the University is unable to demonstrate before us as to how and what action has been taken against the officer, who committed this illegality, whether he has been punished and whether any departmental action was taken against him. When such a question was put, learned Senior Counsel submitted that the University may consider taking action against the officer if so directed by this Court. It is not for this Court to advise the University, if the officer of the University holding a position of trust, acts in an unauthorized manner, contrary to the statutory provisions, it is for the University to take action against the officer concerned and if no action is taken, then the inevitable conclusion that can be drawn is that the officer acted on behalf of the University after due approval and concurrence of the competent authority as in the order dated 20th May, 2014, the issuing authority has mentioned that he is issuing the letter by order of competent authority. Accordingly, we are of the considered view that withdrawal of this letter dated 20th May, 2014 by the communication Annexure R3/2 is nothing but an arbitrary and malafide act of the University only for denying benefit to the petitioner who having acted on the basis of the communication dated 20th May, 2014 have admitted students for the session 2014-2015 and cannot be now dealt with in a manner which cause prejudice to them. That apart, we have no hesitation or doubt in our mind that when and under what situation a mandamus is to be issued by this Court and the limitation under Article 226 of the Constitution. The principle of law with regard to grant of misplaced sympathy, issuance of

mandamus contrary to the statutory provisions and directing the statutory authority to discharge duties contrary to law etc. These are all settled principle of law but they are exception to the normal rule in exceptional situation and one such exceptional situation has arisen in this case. As already indicated herein above, the peculiar situation that was created due to creation of the Central University, non existence of regional University resulted in various districts of Madhya Pradesh without being without a University to cater to the needs of various institutes and students of those region and it was with a view to overcome, this extraordinary situated created that the Government of M.P. after due consultation that the University devised the method for grant of temporary/ adhoc affiliation, so that till regular functioning of Maharaja Chatrasal University is undertaken, the institutes and the students in the region do not suffer adverse consequence. With such an intention the State Government and University acted in finding out a via media of having an ad hoc arrangement. After taking note of all these circumstances this Court had earlier decided the case of Ekta Shiksha Prasar Samiti, Chhatarpur (supra), there is no justification now on the part of the University in making a summersalt and coming out with a case atleast for the current academic session to say that they cannot grant ad hoc affiliation to the institute. Once the process of granting ad hoc affiliation was initiated for the academic session a understanding was arrived at between the State Government and the University and when based on said process initiated for the academic session, the petitioners' institute admitted the students, anything done contrary to this action taken by the University would be nothing but an arbitrary and illegal action and this Court in a petition under Article 226 of the Constitution, in order to do substantial justice can always issue a mandamus. The contention of learned Senior Counsel that the mandamus if any issued would run contrary to the provisions of the Central Universities Act as the Central University cannot grant affiliation to any other institute, cannot be accepted in the peculiar facts and circumstances of the present case because the University had granted temporary affiliation and many institutes are functioning in the region based on the affiliation so granted by the University.

In view of the above, we are of the considered view that in the case of present petitioners also, the same principle as was laid down by this Court in the case of Ekta Shiksha Prasar Samiti, Chhatarpur (supra), will be applicable and there is no reason for denying similar benefit to the petitioner.

Accordingly, all these petitions are allowed. Respondent University is directed to process the Case of the petitioners' institute for the purpose of grant of ad hoc affiliation in accordance to the directions already issued in para 10 of the order passed by this Court in the case of Ekta Shiksha Prasar Samiti, Chhatarpur (supra).

With the aforesaid, all these petitions stands allowed and disposed of.