
(2013) 08 MP CK 0154

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4864 of 2013

Jay Maa Ratangarh Shiksha Avam Samaj Kalyan Samiti

APPELLANT

Vs

NCTE and Others

RESPONDENT

Date of Decision : 14-08-2013

Acts Referred:

Citation : (2013) 08 MP CK 0154

Hon'ble Judges : S.K. Gangele, J;M.K. Mudgal, J

Bench : Division Bench

Advocate : R.B.S. Tomar, for the Appellant; Tapan Trivedi, for the Respondent

Final Decision : Allowed

Judgement

1. Heard. The petitioner has filed this petition for the following reliefs:

In view of the facts mentioned in Para 5 above the petitioners pray that a writ of mandamus or any other suitable writ, direction may kindly be issued and following relief may kindly granted to the petitioner.

(I) That the proceeding annexure P/1 dated 27-29/05/2012-13 held in the 184th Meeting of WRC taking decision for obtaining fresh opinion from the state government in the case of petitioner kindly quashed.

(II) That, the respondents WRC kindly directed to proceed the matter after issuance of letter of intake has provided clause 7(9) of regulation 2009 and issue the formal letter of recognition as provided under clause 7(11) of the regulation 2009.

(III) That, other relief doing justice including cost be ordered.

2. The petitioner is a society registered under the M.P. Societies Registrkaran Adhiniyam, 1973. The petitioner society was granted recognition to conduct D.El.Ed. course with intake of 50 students vide order dt. 07/08.1.2008. It submitted an application to the respondent No. 2 for additional intake. The

application was rejected on the ground that the education department had issued a letter to the WRC not to grant any recognition for conducting new course. Against the aforesaid order a writ petition was filed by the petitioner which was registered as W.P. No. 5236/2012 and it was decided vide order dt. 27.7.2012:-

Contention of learned counsel for the petitioners is that the point involved in this petition has been put to rest by the Main Seat in Writ Petition No. 9984 (Shri Hargovind Laxmi Narayan Samaj Kalyan Samiti Vs. National Council for Teacher Education and others) vide order dated 17.7.2012 and therefore, the same order may be passed in this petition also.

On bare perusal of the averments of this petition and tallying it with the aforesaid order, we are of the view that the point involved in this petition is akin to that of Shri Hargovind Laxmi Narayan Samaj Kalyan Samiti (Supra). Therefore, the decision of Shri Hargovind Laxmi Narayan Samaj Kalyan Samiti (Supra) shall be applicable with mutatis-mutandis.

Thus, this petition is allowed to the extent indicated herein above and the order Annexure P/1 series dated 27.01.2012 & 22.03.2012, Annexure P/2 dated 22.03.2012 and Annexure P/3 dated 27.01.2012 passed by respondents No. 1 and 2 respectively are hereby quashed.

3. Thereafter, the matter was placed before the WRC and the WRC forwarded a letter to the State Government and the Government granted NOC for running D.El.Ed. Course. Consequently, WRC in its 175th meeting constituted a team. The team conducted inspection of the petitioner institution in accordance with the regulation and it submitted a report to the WRC. WRC in its 181st meeting held on 18-20 March 2013 accepted the letter of the petitioner to increase the intake and consequently the petitioner institution deposited the original receipt of FDR. Subsequently, WRC in its 184th meeting held on 27-29 May 2013 has taken a decision that in pursuance to the order of the Hon"ble Supreme Court the case is rolled over to the Session 2014-2015 and for the aforesaid purpose, fresh opinion from the State Government be obtained.

4. As per the petitioner, the decision of the WRC to obtain fresh opinion is contrary to law.

5. The aforesaid point has been considered by us in W.P. No. 4309/2013 (Amar Lata Shekshanik Jan Seva Samiti Vs. NCTE and others) vide order dt. 5.8.2013. In the aforesaid case, we have held as under:-

The respondents No. 1 and 2 in their reply have pleaded that it is necessary for the respondents NCTE to follow Regulations 2009 and the respondents NCTE could not accord recognition to the petitioner institution for D.El.Ed. course for the academic session 2013-14 because the NOC from the State Government was not received within time and as per the decision of the Hon"ble Supreme Court in Maa Vaishno Devi Mahila Mahavidyalaya (supra), the cut off date was over. Hence, the decision was taken to consider the application of the petitioner

institution for the academic session 2014-15 and for that purpose fresh recognition of the State Government is necessary.

Regulation 7 of the Regulations 2009 prescribes procedure in regard to process of application. The Regulation has a statutory force of law. For the purpose of decision of these petitions, Regulation 7(2), (3) & (4) of Regulations 2009 are necessary. The relevant Regulations are as under:-

(2) A written communication alongwith a copy of the application form submitted by the institution(s) shall be sent by the office of Regional Committees to the State Government or Union Territory Administration concerned within 30 days from the receipt of application, in chronological order of the receipt of the original application in the Regional Committee.

(3) On receipt of the communication, the State Government or Union Territory Administration concerned shall furnish its recommendations or comments on the applications to the office of the Regional Committee concerned within 45 days from the date of issue of the letter to the State Government or Union Territory. In case, the State Government or Union Territory Administration is not in favour of recognition, it shall provide detailed reasons or grounds thereof with necessary statistics, which shall be taken into consideration by the Regional Committee concerned while disposing of the application.

(4) If the recommendation of the State Government is not received within a period of 45 days from the date of the issue of letter to the State Government, the Regional Committee concerned shall send a reminder to the State Government providing further time of another 30 days from the date of issue of the reminder letter to furnish their comments on the proposal. Thereafter, on expiry of this period, the matter shall be placed before the Regional Committee alongwith the recommendation of the State Government, if received. Placing the application before the Regional Committee shall not be deferred on account of non-receipt of comments of recommendation of the State Government. After consideration of the recommendation of the State Government or on its own merits, the Regional Committee concerned shall decide that institution shall be inspected by a team of experts called visiting team with a view to assess the level of preparedness of the institution to commence the course. Inspection shall not be subject to the consent of the institution, rather the decision of the Regional Committee to cause the inspection shall be communicated to the institution with the direction that the inspection shall be caused on any day after 10 days from the date of communication by the Regional Office. The Regional Committee shall ensure that inspection is conducted ordinarily within 30 days from the date of this communication to the institution. The institution shall be required to provide details about the infrastructure etc. on the duly filled up proforma available on National Council for Teacher Education web-site to the visiting team, at the time of inspection along with building completion certificate issued by the competent civil authority, if not submitted earlier.

The Regional Committee shall organise such inspections strictly in chronological order of the receipt of application for the cases approved by the Regional Committee for Inspection.

The members of the visiting team for inspection shall be decided by the Regional Committee, out of the panel of experts approved by it, and in accordance with the visiting team policy of National Council for Teacher Education.

6. Regulation 7(3) of the Regulations 2009 prescribes that on receipt of communication, the State Government shall furnish its recommendations within 45 days from the date of issuance of letter to the State Government. Regulation 7(4) of the Regulations 2009 further prescribes that if the recommendation of the State Government is not received within a period of 45 days from the date of issuance of letter to the State Government, the Regional Committee shall send a reminder and further grant time of another 30 days to furnish their comments and thereafter on expiry of this period the matter shall be placed before the Regional Committee alongwith the recommendation of the State Government if received and it has further been mentioned that if no comment or recommendation of the State Government is received, the Regional Committee shall consider the application. It clearly shows that the statutory regulation prescribes a time limit for submitting recommendation by the State Government on the application of recognition.

Hon"ble Supreme Court in the case of Maa Vaishno Devi Mahila Mahavidyalaya (supra) has considered the role of the State in granting recognition and held as under:-

79. It is on record and the Regulations framed under the Act clearly show that upon receiving an application for recommendation, NCTE shall send a copy of the application with its letter inviting recommendations/comments of the State Government on all aspects within a period of 30 days. To such application, the State is expected to respond with its complete comments within a period of 60 days. In other words, the opinion of the State on all matters that may concern it in any of the specified field is called for. This is the stage where the State and its Department should play a vital role. They must take all precautions to offer proper comments supported by due reasoning. Once these comments are sent and the State Government gives its opinion which is considered by NCTE and examined in conjunction with the report of the experts, it may grant or refuse recognition. Once it grants recognition, then such grant attains supremacy vis-?-vis the State Government as well as the affiliating body. Normally, these questions cannot be reagitated at the time of grant of affiliation. Once the university conducts inspection in terms of its statutes or Act, without offending the provisions of the Act and conditions of recognition, then the opinion of the State Government at the second stage is a mere formality unless there was a drastic and unacceptable mistake or the entire process was vitiated by fraud or there was patently eminent danger to the life of the students working in the school because of non compliance with a substantive condition imposed by either

of the bodies. In the normal circumstances, the role of the State is a very formal one and the State is not expected to obstruct the commencement of admission process and academic courses once recognition is granted and affiliation is found to be acceptable.

7. From the aforesaid judgment of the Hon''ble Supreme Court, it is clear that once the comments are sent and the State Government gives its opinion, which is considered by the NCTE and examined in conjunction with the report of the experts, it may grant or refuse recognition. Once it grants recognition, then such grant attains supremacy. In the present case after considering the No Objection Certificate, the WRC-respondent No. 2 in its 181st meeting has decided to issue letter of intent under Clause 7(9) of the Regulations 2009, which is as under:-

(9) The institution concerned shall be informed, through a letter of intent, regarding the decision for grant of recognition or permission subject to appointment of qualified faculty members before the commencement of the academic session. The letter of intent issued under this clause shall not be notified in the Gazette but would be sent to the institution and the affiliating body with the request that the process of appointment of qualified staff as per policy of State Government or University Grants Commission or University may be initiated and the institution be provided all assistance to ensure that the staff or faculty is appointed as per National Council for Teacher Education norms within two months. The institution shall submit the list of the faculty, as approved by the affiliating body, to the Regional Committee.

8. Thereafter, subsequent decision of the WRC to send the application to the government for fresh comments is contrary to the statutory provisions of Regulations 2009 and the law laid down by the Hon''ble Supreme Court in the case of Maa Vaishno Devi Mahila Mahavidyalaya (supra).

9. Hence, all the Writ Petitions are allowed. The impugned decision of the respondent No. 2 (Annexure P/1) taken in its 184th meeting in regard to inviting fresh opinion from the State Government is hereby quashed. No order as to costs.

10. In view of the order passed by us in W.P. No. 4309/2013 quoted above, present writ petition is allowed. The impugned decision of the respondent No. 2 (Annexure P/1) taken in its 184th meeting in regard to inviting fresh opinion from the State Government is hereby quashed. No order as to costs.