

(2008) 09 KAR CK 0040
In the Karnataka High Court
Case No : Writ Petition No. 11141 of 2008

Karnataka International Educational Trust (Regd.)	APPELLANT
Vs	
The Bangalore University and Others	RESPONDENT

Date of Decision : 17-09-2008

Acts Referred:

National Council for Teachers Education Act, 1993 — Section 14 (1), 14 (6), 82, 83

Citation : (2008) ILR (Kar) 4738 : (2009) 4 KarLJ 320 : (2008) 5 KCCR 669 SN

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : H. Subramanya Jois, for B.S. Vijayalakshmi, for the Appellant; A.R. Desai, for R1, B. Manohar, AGA for R2 and Ashok Haranahalli, for R3, for the Respondent

Final Decision : Allowed

Judgement

S. Abdul Nazeer, J.—In this case, the petitioner has sought for quashing the endorsement dated 7.8.2008 bearing No. ACA-3-HO-Sum.MED:KIET:2008-09 (Annexure "G") issued by the first respondent-University and for a direction to the University to accord affiliation to the petitioner for imparting instructions at its K.I.E.T. College of P.G. and Research in Education, Bangalore, for M.Ed. course and for certain other reliefs.

2. Brief facts of the case are as under:

The petitioner is a registered Trust, which has been catering to the educational needs of the students admitted to its various institutions. The petitioner has established a college for imparting instructions in B.Ed. course from the academic year 2006-2007. The petitioner has made an application to the Southern Regional Committee of the National Council for Teacher Education (the third respondent herein) to grant recognition for M.Ed course with an annual intake of 25 students for the academic year 2008-2009. The third respondent has passed an order as per Annexure "A" dated 6.3.2008 granting recognition to the

petitioner for M.Ed. course with an annual intake of 25 students subject to fulfillment of such other requirements as may be prescribed by other regulatory bodies like UGC, affiliating University/bodies, State Government etc., as applicable.

3. Simultaneously, the petitioner made an application to the State Government-the second respondent herein to grant affiliation in accordance with the provisions of the Karnataka State Universities Act, 2000 (for short "the Act"). The second respondent has sent a letter as per Annexure "B" dated 21.4.2008 directing the University to consider the application of the petitioner seeking grant of affiliation in accordance with law and to submit the proposal to the State Government. However, the University has sent a reply as per Annexure-D dated 9.5.2008 to the State Government stating that affiliation cannot be granted to the petitioner for M.Ed course having regard to the decision of the Syndicate of the University dated 1.12.2007. Once again, the State Government by a communication as per Annexure-F dated 30.6.2008 has directed the University to send a local inspection committee to the college of the petitioner and to secure the report. However, the University has sent a communication to the State Government as per Annexure "G" dated 7.8.2008 stating that the petitioner is not eligible for grant of affiliation for M.Ed. course at its college as it was not granted affiliation for a continuous period of five years for B.Ed course. The petitioner has called in question the said communication in this writ petition.

4. The University has filed its objections. It is contended that the petitioner has started B.Ed. course in its college on 1.7.2006. Thus, it does not meet the requirement of five years of continuous affiliation of the University for B.Ed course. Therefore, it is not entitled for grant of affiliation for M.Ed course.

5. I have heard Sri Subramanya Jois, learned Senior Counsel for the petitioner, Sri A.R.. Desai, learned Counsel for the first respondent, Sri B. Manohar, learned AGA for the second respondent.

6. Learned Senior Counsel appearing for the petitioner submits that the University is not justified in rejecting the request of the petitioner for grant of affiliation for M.Ed course. It is submitted that the National Council for Teachers Education (for short "NCTE") has granted recognition to the petitioner u/s 14(1) of the National Council for Teachers Education Act, 1993, (for short "NCTE Act") for M.Ed. course with an annual intake of 25 students in its college. Once the NCTE grants recognition, the State Government and the University have no other option but to grant affiliation in accordance with the recognition granted by the NCTE. It is further submitted that after the enactment of NCTE Act by Parliament, the field of teacher's education and matters connected therewith stood fully and completely occupied thereby and the State Legislature could not encroach upon that field. In this connection, he has relied on the decision of the Apex Court in State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others, . It is argued that in the 48th meeting of the Inter-University Board held on 24.9.2007 under the Chairmanship of the Hon'ble

Minister for Higher Education, a decision was taken to accord permission to private colleges to start M.Ed. course subject to availability of infrastructure, such as qualified teachers, building, library, etc., with the recommendation of University. It is further argued that the Vice-Chancellor of the second respondent University is a party to the said resolution and that the said resolution is binding on the University, having regard to Sub-section (5) of Section 72 of the Karnataka State Universities Act, 2000 (for short "the Act").

7. On the other hand, learned Counsel appearing for the University would contend that the B.Ed college of the petitioner was started in the year 2006. It has not completed five years. The University has taken a decision not to permit any of the B.Ed. colleges, which have not put in five years to grant affiliation for M.Ed. course. In this connection, he has relied on the guidelines formulated by the University for permitting post-graduate programme in affiliated colleges.

8. Learned AGA appearing for the second respondent submits that the State Government has directed the University to send a local inspection committee for inspection of the college run by the petitioner. In the Inter University Board meeting held on 24.9.2007, a decision was taken to permit the private colleges to start M.Ed. course subject to availability of the required infrastructure. No condition has been imposed as to the previous experience in running the B.Ed. course. If the University finds that the college run by the petitioner has necessary infrastructure, it is bound to send a proposal to the State Government for grant of affiliation in accordance with the recognition granted by the NCTE as per Annexure "A".

9. I have carefully considered the arguments of the learned Counsel made at the Bar and perused the materials placed on record.

10. It is not in dispute that the NCTE has granted recognition for M.Ed. course to the college of the petitioner with an annual intake of 25 students as per the order at Annexure "A". The satisfaction recorded by the NCTE with regard to the availability of infrastructure in the aforesaid college as is evident at Annexure "A" order is as under:

AND WHEREAS on scrutiny of the application submitted by the institution, the documents attached therewith the affidavit and the input received from the visiting team in the form of report and videography, the Committee is satisfied that the institution fulfills the requirements under the provisions of NCTE Act, Rules and relevant Regulations including the Norms and Standards for the said teacher education programme such as instructional facilities, infrastructural facilities, library, accommodation, financial resources, laboratories, etc. for running the programme and has appointed duly qualified teaching staff as per NCTE norms.

However, the said order makes it clear that the recognition is subject to the fulfillment of such other requirements as may be prescribed by the regulatory bodies like affiliating university and the State Government as applicable. It is

also an admitted fact that petitioner has requested the State Government to grant affiliation for M.Ed. course in its college and the State Government has directed the University to send a local inspection committee to inspect the college to find out if necessary infrastructure is available for the said purpose. The contention of the University is that the petitioner should have the benefit of affiliation of the University for a continuous period of five years for B.Ed course in order to grant affiliation for M.Ed. course. Therefore, the question for consideration is whether the University is right in contending that the institution concerned should have five years of continuous affiliation for B.Ed. course in order to grant affiliation for M.Ed. course?

11. The Parliament has enacted NCTE Act, 1993, for establishment of National Council for Teacher Education with a view to achieve planned and coordinated development of the teacher-education system throughout of the country, to regulate proper maintenance of norms and standards in the teacher education system and for matters connected therewith. Chapter IV provides for recognition of teacher education institutions. It is not in dispute that the petitioner has made an application to the Southern Regional Committee of NCTE for grant of recognition for M.Ed course in accordance with Sub-section (1) of Section 14 of the NCTE Act and on consideration of the said application, the Southern Regional Committee of the NCTE has granted recognition for M.Ed course to the institution of the petitioner with an annual intake of 25 students. It is well settled that the final authority lies with the NCTE for grant of recognition to an educational institution. The NCTE Act is referable to Entry No. 66 of List I of the VII Schedule of the Constitution of India. Since the subject is exclusively covered by Entry 66 of List I of the VII Schedule of the Constitution, the State has no power to encroach upon the legislative power of the Parliament. It is only when the subject is covered by Entry 25 of List III of VII Schedule of the Constitution, that there is a concurrent power of Parliament as well as the State Legislatures and appropriate Act can be made by the State Legislature subject to limitations and restrictions under the Constitution. The Apex Court in *Sant Dnyaneshwar Shikshan Shashtra Mahavidyalaya's case* (supra) was considering a similar question. In the said case, the NCTE Western Regional Office granted recognition to the respondent-institution therein for B.Ed course from the academic year 2005-2006 with an intake of 100 students. The State Government challenged the action of the NCTE of granting permission to open new B.Ed colleges ignoring the policy decision of the State dated 28.12.2004 before the High Court of Bombay. The High Court dismissed the said writ petition. The said decision was challenged by the State Government before the Apex Court. The Apex Court has held that the field is fully and completely occupied by an Act of the Parliament and covered by Entry 66 of List I of Schedule VII, and it is not open to the State Legislatures to encroach upon the said field. It is not open to the State Government to refuse permission relying on a State Act or "policy consideration". It has been held as under:

62. From the above decisions, in our judgment, the law appears to be very well

settled. So far as coordination and determination of standards in institutions for higher education or research, scientific and technical institutions are concerned, the subject is exclusively covered by Entry 66 of List I of Schedule VII to the Constitution and State has no power to encroach upon the legislature power of Parliament. It is only when the subject is covered by Entry 25 of List III of Schedule VII to the Constitution that there is a concurrent power of Parliament as well as the State Legislatures and appropriate Act can be made by the State Legislature subject to limitations and restrictions under the Constitution.

63. In the instant case, admittedly, Parliament has enacted the 1993 Act, which is in force. The preamble of the Act provides for establishment of National Council for Teacher Education (NCTE) with a view to achieving planned and coordinated development of the teacher-education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher-education systems and for matters connected therewith. With a view to achieving that objection, the National Council for Teacher Education has been established at four places by the Central Government. It is thus clear that the field is fully and completely occupied by an Act of Parliament and covered by Entry 66 of List I of Schedule VII. It is, therefore, not open to the State Legislature to encroach upon the said field. Parliament alone could have exercised the power by making appropriate law. In the circumstances, it is not open to the State Government to refuse permission relying on a State Act or on "policy consideration".

It has been further held that the NCTE cannot be deprived of its authority or power in taking an appropriate decision under the Act irrespective of absence of "no objection certificate" by the State Government/Union Territory. The Supreme Court has pointed out that as per the Scheme of the NCTE Act, once recognition has been granted by the NCTE u/s 14(6) of the Act, every University is obliged to grant affiliation to such institution. The relevant paragraphs in the judgment are as under:

68. In view of the fact, however, that according to us, the final authority lies with NCTE and we are supported in taking that view by various decisions of this Court, NCTE cannot be deprived of its authority or power in taking an appropriate decision under the Act irrespective of absence of no objection certificate by the State Government/Union Territory. Absence or non-production of NOC by the institution, therefore, was immaterial and irrelevant so far as the power of NCTE is concerned.

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74. It is thus clear that the Central Government has considered the subject of secondary education and higher education at the national level. The Act of 1993 also requires Parliament to consider teacher-education system "throughout the country". NCTE, therefore, in our opinion, is expected to deal with applications for establishing new B.Ed colleges or allowing increase in intake capacity, keeping

in view the 1993 Act and planned and coordinated development of teacher-education system in the country. It is neither open to the State Government nor to a University to consider the local conditions or apply "State policy" to refuse such permission. In fact, as held by this Court in cases referred to hereinabove, the State Government has no power to reject the prayer of an institution or to overrule the decision of NCTE. The action of the State Government, therefore, was contrary to law and has rightly been set aside by the High Court.

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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 provisions 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.

12. The NCTE Act or the Rules made thereunder do not require that an institution seeking affiliation for M.Ed. course should have five years of continuous affiliation for B.Ed. course. Therefore, once the NCTE grants recognition for M.Ed course, the University is obliged to grant affiliation to such an institution. The University cannot refuse to grant affiliation on the ground that the colleges having atleast five years affiliation only are eligible to start post-graduate programmes. The relevant guidelines of the University in this regard in respect of the course in question is invalid. It is needless to say that in similar circumstances, other Universities in the State of Karnataka have granted affiliation to the institutions for M.Ed. course without the requirement of five years of continuous affiliation for B.Ed. Course.

13. It is not in dispute that in the 48th meeting of the Inter University Board held on 24.9.2007, it was resolved to grant affiliation to colleges for establishment of M.Ed. course without the requirement of the said college having five years of continuous affiliation for B.Ed. course. The said resolution is as under:

PROVISION TO START M.ED. COURSES IN THE PRIVATE COLLEGES: The issue pertains to permitting private colleges to start M.Ed. courses. During the discussion, it was noticed that some of the Universities are issuing applications to private colleges for establishment of M.Ed. colleges/ courses. Finally, it was decided to accord permission to private colleges to start M.Ed. courses who have basic infrastructure such as qualified teachers, building, library, etc. with the recommendation of Universities only.

The Vice-Chancellor of the University has participated in the said meeting of the Inter-University Board. The State Government by its communication dated 25.11.2007 at Annexure-J has sent a copy of the aforesaid resolution to the Registrars of all the Universities with a direction to implement the same.

Therefore, the question for consideration is whether the University is bound by the said resolution?

14. Section 72 of the Act provides for constitution of Inter-University Board/ committee consisting of the Minister in-charge of Higher Education as its Chairman. The members of the said committee are the Vice-Chancellor of all the universities in the State, the Secretaries to the Government in-charge of Higher Education, Department of Finance, Department of Agriculture and Horticulture, Department for Planning, Health and Family Welfare Department in-charge of Medical Education, Social Welfare Department, the Commissioner for Collegiate Education, the Director of technical Education, the Commissioner for Public Instruction, the Director of Medical Education, and the Director of Pre-University Education.

Sub-section (4) of Section 72 of the Act describes the functions of the Board which includes coordinating development of academic facilities, specialization and standards; coordinating matters affecting students; studying the finances of Universities as well as the administrative problems of Universities; and acting as a coordinating agency for the financial programme of the universities funded by the UGC and by the State Government respectively.

Sub-section (5) of Section 72 of the Act states that the recommendations, resolutions or the decisions of the Board shall be subject to the approval of the State Government binding on the University. It is as under:

The recommendations, the resolutions or the decisions of the Board shall subject to the approval of the State Government be binding on the Universities in the State and shall be implemented forthwith and a compliance report thereof shall be sent to the Member Secretary within two months.

15. The decision taken by the Inter-University Board dated 24.9.2007 was with a view to regulate proper maintenance of norms and standards in the teacher education system and the said decision is in conformity with the decision of the NCTE. The stand of the University is contrary to the aforesaid decision of the Inter-University Board. The University is bound to implement the said decision of the Inter-University Board.

16. In the result, writ petition succeeds and it is accordingly allowed.

17. The communication of the University as per Annexure "G" dated 7.8.2008 is hereby quashed. The University is directed to furnish an application form to the petitioner-Trust for seeking affiliation for M.Ed. course forthwith. The petitioner is permitted to file the said application before the University immediately thereafter. On filing of the application, the University is directed to consider the same in the light of the observations made in the course of this order and in accordance with law as expeditiously as possible.

18. No costs.