
(2005) 03 BOM CK 0147

In the Bombay High Court

Case No : Writ Petition No's. 7676 and 7677 of 2004

Marathwada Association for Social Services

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 11-03-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Maharashtra Universities Act, 1994 — Section 82, 82(1), 82(3), 82(4), 82(5)

National Council for Teacher Education Act, 1993 — Section 14, 14(1), 15(1), 32, 5(1)

Citation : (2005) 5 BomCR 784 : (2005) 3 MhLj 308

Hon'ble Judges : V.C. Daga, J; M.G. Gaikwad, J

Bench : Division Bench

Advocate : P.M. Shah and N.L. Jadhav, in W.P. No. 7676 of 2004 and V.G. Gangapurwala, holding for J.R. Patil, in W.P. No. 7677 of 2004, for the Appellant; U.K. Patil, A.G.P. for respondent Nos. 1 to 3 and S.S. Choudhari, in W.P. No. 7676 of 2004 and U.K. Patil, A.G.P. for respondent Nos. 1 to 3, S.S. Choudhari and P.M. Shah, holding for N.L. Jadhav, in W.P. No. 7677 of 2004, for the Respondent

Final Decision : Dismissed

Judgement

M.G. Gaikwad, J.—Rule made returnable forthwith. By consent of parties, petitions are heard and decided finally.

2. These two petitions have been decided by this common judgment as in both petitions point involved and relief claimed is one and the same.

Writ Petition No. 7676/04 is a petition filed by the petitioner trust seeking direction against the respondents 1 to 3 to quash and set aside the publication dated 22-12-2004 issued by respondent No. 3 staying admission process for B.Ed. college of the petitioner institution for academic year 2004-05 and direct them to complete the admission process as per advertisement dated 19-12-2004 and 20-12-2004.

Writ Petition No. 7677/04 has been filed for the same relief by the students claiming that they are eligible for the admission for B.Ed. course and as the

process of admission was stayed as such they were deprived of getting admission with the request they are loosing their career.

3. Petitioner trust is registered under Bombay Public Trust Act in the year 1985 for the purpose of imparting education. In the year 2003 petitioner trust submitted proposal to respondent No. 4 University for running B.Ed. college in Urdu medium. The said proposal was- forwarded to the Government by the University along with 3 other proposals. The State of Maharashtra granted No Objection Certificate and forwarded the proposal to National Council For Teachers Education (hereinafter referred to as the N.C.T.E. for short). The Committee appointed by N.C.T.E. visited the petitioner trust to verify the infrastructure. After the report by their letter dated 20-9-2004 from the Committee) N.C.T.E. granted permission to run B.Ed. college for intake capacity of 100 students for the academic year 2004-05. Respondent No. 4 University granted affiliation on 6-10-2004. After this process respondent No. 3 declared admission programme for seven institutions including the petitioner vide their advertisement published on 7-10-2004. However, the process of admission for petitioner institution was cancelled by respondent No. 3 vide letter dated 15-10-2004. The said action was challenged by petitioner trust in Writ Petition No, 6212/2004. In the said Petition State Government raised contention that permission granted to petitioner trust was for Urdu medium. Thereafter, petitioner withdrew that Writ Petition on 4-11-2004. Thereafter, petitioner approached the State Government to grant permission to run the B.Ed. college in Marathi medium and also forwarded application to N.C.T.E. Thereafter, permission has been granted to the petitioner institution to run B.Ed. college in Marathi medium by letter dated 25-11-2004. Respondent No. 4 University was also made aware of these facts. Thereafter, on the request of the petitioner to respondent No. 2 to start admission process necessary permission was granted with certain condition subject to executing an undertaking that the trust will complete the syllabus of the students within stipulated time. The petitioner submitted such undertaking and complied with other conditions imposed by the respondent and made request to start admission process. Thereafter, respondent No. 3 started admission process by publishing advertisement in the newspapers dated 19-12-2004 and 20-12-2004. The petitioner trust in order to fill up the seats of management quota, also issued advertisement and also admitted some students on 20-12-2004. However, immediately after 2 days respondent No. 3 without any intimation to the petitioner trust on 22-12-2004 by another advertisement cancelled the process of admission. This action is challenged by the petitioner trust in this petition filed under Article 226 of the Constitution of India contending that the action is mala fide and arbitrary and sought direction from this Court to cancel the communication dated 22-12-2004 with further direction to the respondents to complete the admission process for the academic year 2004-05.

4. As stated above, 2 students also preferred Writ Petition No. 7677/04 challenging the very same action of the respondents to cancel the admission process. According to them, they have passed their C.E.T. examination and they

are eligible for the admission for B.Ed. course on merit and that right to get admission is denied as the process is stopped. They also claimed the same relief with direction to the respondent to complete the admission process for the academic year 2004-05.

5. On being noticed, all four respondents appeared and filed their returns. Respondent No. 4 University admitted the factual aspects of grant of permission to start B.Ed. course in Urdu medium and subsequent change granting permission to run the college in Marathi medium. According to the University, they have intimated that there would not be any difficulty in holding annual examination of the students because of late admission as the petitioner trust admitted that the course will be completed by utilizing Sundays as well as summer vacation and agreed to hold examinations in the month of October-November, 2005.

6. Respondents 1 to 3 admitted almost all the facts regarding issuance of No Objection Certificates by the State Government and forwarding the proposals of petitioner trust to N.C.T.E. and granting of permission by N.C.T.E. including earlier permission which was granted in favour of the petitioner to run college in Urdu medium. They have also admitted grant of permission to run college in Marathi medium vide letter dated 25-11-2004. According to them, academic year starts from June to April. For one or other reasons, admission process was delayed, as such the information was sought from University as to whether examinations can be conducted in the month of October, 2005. The reply of the University was casual and vague. So the admission programme declared was required to be stayed. The contention of these respondents as such is that, as per schedule the process of admission ought to have been initiated in the month of June or July and so as to hold examinations in the month of April. Since admission process was initiated in the month of December as such there was no possibility of completion of course as per syllabus within a period of 4 months. On these promise, admission process initiated by them was cancelled. It is thus contended that this action of the respondent cannot be said to be mala fide or arbitrary. Contention has also been raised that staff appointed by petitioner is not qualified as per norms of N.C.T.E.

Submissions:

7. We have heard the arguments advanced on behalf of both the parties. On behalf of University respondent No. 4 Shri Choudhari, learned counsel made submission that the University has no objection to allow the petitioner trust to admit students. The University has shown its approval to the proposal made by the trust that the students of this batch be treated as a special batch and they be allowed to complete their course as per syllabus upto October, 2005 and expressed its willingness to hold examination in the month of October, 2005.

8. On behalf of petitioner trust Shri P. M. Shah, learned senior counsel made submission that the respondents before issuing the advertisement sought

compliance from the petitioner trust regarding appointment of staff as well as schedule as to how the course will be completed as per norms of N.C.T.E. The petitioner trust made compliance of these conditions and gave undertaking as well as executed the bonds. The University after this compliance submitted its report to the Director of Education. Thereafter, the process of admission came to be initiated. So there were absolutely no reasons for the State Council to stay the admission process, as such action to stay the admission process is arbitrary and liable to be quashed and set aside. He has also produced on record documents to show the compliance and the schedule how the course will be completed within 180 days as per norms of N.C.T.E. He made statement on behalf of the petitioner trust that the trust will make necessary arrangement for this special batch of students as suggested by the University. That the course will be completed before October, 1995 and the University may conduct examinations in October, 2005 as a special batch because other Universities are conducting examinations in the month of October, 2005. He has also pointed out that the staff appointed by the college is as per norms of N.C.T.E.

Learned Asstt. Govt. Pleader Shri U. K. Patil seriously challenged the eligibility of the staff appointed by the trust contending that they are not eligible as per norms of N.C.T.E. His further contention was that the permission granted was for academic year 2004-05. As per norms of the N.C.T.E. admission process ought to have started in the month of June and the academic year ends at the end of April, 2005. The permission granted by N.C.T.E. to the petitioner trust was in the month of September, 2004 i.e. to run the college in Urdu medium. Later on in the month of November, 2004 on the application of the petitioner permission was granted to run B.Ed. college in Marathi medium by N.C.T.E. So, as per rules and regulations the petitioner is not entitled to run the college in the middle of the year that is now the action to stay admission process sought to be justified by him. He contends that the charge set up is without any merit. He thus prayed for dismissal of this petition.

Consideration:

9. Having heard the parties, the controversy between the parties is as to whether this Court should grant permission to the college to complete admission process for B.Ed. course setting aside the order of the State Council. It is not in dispute that the N.C.T.E. granted permission in favour of the petitioner to open B.Ed. college on 20-9-2004 with intake capacity of 100 students for academic year 2004-05. The University respondent No. 4 also acceded its recognition to start B.Ed. college by their office letter dated 6-10-2004. Thereafter, the process of admission was initiated by Education Department, but it was stayed by an advertisement dated 15-10-2004 on the ground that though permission in favour of the petitioner institution was granted to start the college in Urdu medium the University has granted recognition for B.Ed. course in Marathi medium. The petitioner had challenged the action of the Government to stay admission process by preferring Writ Petition No. 6612/04. However, the said Writ Petition

was withdrawn.

10. The petitioner was again required to approach the Government and N.C.T.E. to obtain permission to run B.Ed. college in Marathi medium. The State Government has issued "No Objection Certificate" and N.C.T.E. was also pleased to grant permission to open B.Ed. college in Marathi medium vide their letter dated 16-11-2004. Thereafter, the State Government vide its order dated 25-11-2004 agreed to allow the petitioner institution to run the college on certain conditions. The conditions imposed were fulfilled by executing documents and undertaking that the curriculum will be completed in the academic year 2004-05 as per University norms. Fresh advertisement was issued and admission process was again initiated but it was stayed after two days. This action of the Government to stay the process need judicial examination.

11. According to the petitioner in the matter of recognition of educational institution the role of the State Government is limited; only to the extent of Government's satisfaction to see the availability of the budgetary resources, ability of the management and location of such institution. The right to conduct examination is vested with the University and in the present matter, University is having no objection to start admission process and complete the same upto October-November, 2005. The University has shown its willingness to conduct examination of the students by way of special batch in the month of October or November, 2005. When the admission process was initiated, State Government and asked the petitioner institution to complete the curriculum as per the norms of the N.C.T.E. and see that the students to be admitted are not made to suffer. An undertaking to this extent was also given by the petitioner institution. The N.C.T.E. who is a competent authority prescribed curriculum, transaction and requirement and the requirement is that there shall be at least 150 teaching days in a year from admission and in addition, every teacher trainee shall be required to undergo internship in teaching for at least 30 days. So, the time schedule for this curriculum fixed is of 180 days.

The admission process which was initiated was for the academic year 2004-05. As admitted by University the petitioner institution gave undertaking that curriculum will be completed as per norms upto October, 2005. Now the controversy is as to whether the curriculum needs to be completed upto April, 2005 or whether this period can be extended upto October, 2005. The learned Senior counsel Shri P. M. Shah pointed out from the affidavit filed by University that in other Universities, the examinations are being held even in the month of October of every year. So there should be no hurdle to permit the University to conduct examinations in the month of October, 2005. It has to be seen whether it is a fit case to allow the present institution to admit the students at the fag end of academic year. No doubt, the respondents in the mid term i.e. at the middle of the year issued advertisement for admission, first in the month of October, 2004 and later on in the month of December, 2004. In this view of the matter, submission is made that when the State Government initially permitted this

institution to run the college giving admission in the middle of the academic year, there was no reason to stay the process of admission. The factual aspect is not in dispute in the present case; that the N.C.T.E. has granted permission to the petitioner to run B.Ed. college in the month of September, 2004. Had the process been initiated immediately, then there was no hurdle in the way of the institution to complete the curriculum of 180 days upto the end of April, 2005. The process came to be initiated in October, 2004, was stayed. There were valid grounds to stay that process because initial permission was to run B.Ed. college was in Urdu medium. The affiliation given by University was to run B.Ed. college in Marathi medium. When objection in this behalf was raised by the State Government, the petitioner institution applied for permission to start B.Ed. college in Marathi medium. The proposal was sent to N.C.T.E. Ultimately, permission was granted vide letter dated 25-11-2004. Thereafter, again the process for admission to B.Ed. course came to be initiated in the month of December, 2004. From that date, it was not possible to complete the curriculum as per norms of the University. The institution as well as the university made a proposal that after admission of this batch syllabus can be completed upto October, 2005 and the examination can be held in the month of October, 2005.

12. In the present matter, the petitioner as well as respondents have overlooked the statutory provisions. Chapter III of Maharashtra Universities Act, 1994 ("Act" for short) makes provision for grant of permission, affiliation and recognition. Section 82 lays down the procedure for grant of permission. The University is supposed to prepare the prospective plan and get the same approved by the State Council for Higher Education. Sub-section (3) of Section 82 prescribes time schedule for submission of applications to open new colleges. The management seeking permission to open new college needs to submit application in prescribed form before last day of October of the preceding year from which the permission is sought. Sub-section (4) prescribe that the management council of University is to take decision before last day of December of the year either to recommend the permission or to refuse. As per provisions under Sub-section (5) State Government has to examine and verify whether the institution is having budgetary resources, the suitability of the management seeking permission to open college and then Government is required to take decision whether to grant permission or not.

13. The institution in question is the Teachers Training Institution which is governed by National Council for Teachers Education Act, 1993 (N.C.T.E. Act). Section 14 of the said Act deals with the powers of the Committee to recognise the institutions offering courses. So final authority under this Act in the matter of recognition is the N.C.T.E. No doubt in the present case, the council has granted permission to the petitioner institution, initially, to open a new college in Urdu medium with 100% intake capacity for the year 2004-05 and, subsequently, modified it to run the college in Marathi medium. As per provision under the Universities Act [Sub-section (5) of Section 82] the Government is vested with the power to issue "No Objection Certificate". Second Proviso to Sub-section (5)

is mandatory in nature which lays that from the academic year 2001-02, the Government shall communicate the decision of grant of permission to the University on or before 15th July of the year in which the new college is proposed to be started. Permission received, thereafter, shall be given effect by the University only in the subsequent academic year. In the present matter, the N.C.T.E. has granted permission to run the college in Marathi medium in the month of November. However, the University granted affiliation for the same year 2004-05. As a matter of fact as per the provisions of the University Act, it was necessary to make permission effective from subsequent academic year i.e. 2005-06.

The council is vested with the power to make regulations u/s 32 which includes the power to prescribe the form and manner in which application for recognition is to be submitted u/s 14(1) and to impose conditions for the proper functioning of the institution as well as to frame regulation in relation to the form and manner in which application for permission is to be made under Sub-section (1) of Section 15. Exercising these powers, the N.C.T.E. has framed regulations which are known as N.C.T.E. (Form of application for recognition, the time of submission of application, determination of norms and standards for recognition of teachers education from time to time and permission to start new course or training) Regulation 2002. Clause 7 of the said Regulation 2002 prescribed time limit for submission of application seeking permission to start a new course and such application in prescribed form has to reach the concerned regional committee on or before 31st December every year for the course of training commencing in the next academic session. Such application needs to be forwarded to the regional committee accompanied with "No Objection Certificate" from the State Government and thereafter, regional committee is required to take decision about grant of recognition. No regulation is framed fixing time limit within which decision should be taken by the State Government, for grant of No Objection Certificate and for the decision of regional committee. In the case of St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education and Another, , the Apex Court recognised the powers of the N.C.T.E. to make regulation generally to carry out the provisions of the N.C.T.E. Act. As no Regulations are framed for taking decision on the application moved for "No Objection Certificate" of the State Council, the Apex Court has thus observed that: "It will therefore, be proper that the council frames appropriate regulations fixing the time limit within which a decision should be taken by the State Government on the application moved by the institution for grant of No Objection Certificate. In the cases where there is no such Regulations a reasonable time of 4 months was fixed by the Apex Court for taking decision by the State Government with direction that on failure, it shall be deemed that the No Objection has been granted."

These provisions make it clear that the application for permission needs to be submitted before 31st December of the year for seeking permission to start new course is the subsequent year. So it is expected that the process needs to be

completed before commencement of the academic year and no Rule or Regulation prescribes grant of permission or authority to give admission for new course in the middle of the academic year.

14. In the present case the recognition/permission granted by the council is for academic year 2004-05. It cannot be said that the academic year commences from the month of October and comes to an end in September October of the next academic year. University is having no objection to hold examinations in the month of October. However, as stated above, the provisions of Section 82 of Maharashtra Universities Act, are clear that in case the permission is granted after 15th July of the year its effect needs to be given by the University in the subsequent academic year. The permission granted, by the N.C.T.E. was for academic year 2004-05. The curriculum as per the norms needs to be completed in that academic year only. The academic year 2004-05 is now at the verge of completion. The request of the petitioner as well as the admission process initiated by respondents in the month of December, 2004 was at the middle of the year. The action to initiate admission process at the middle of the year and the University's consent for the same is in total disregard to the statutory provisions in the Maharashtra Universities Act as well as the Regulations of N.C.T.E. So at the fag end of the academic year 2004-05 relief is sought by the petitioner to direct the respondent to initiate admission process cannot be granted when academic year is at the verge of coming to an end. As a matter of fact this petition was filed in the month of February, 2003 and is being decided within 10 days from the date of hearing i.e. on 12th March, 2005. If at all this petition is allowed the course as per syllabus cannot be completed. The petitioner institution is not entitled to seek permission.

15. Writ Petition No. 7677/04 is preferred by two students claiming that they are eligible for admission as they have passed C.E.T. As the admission process is stayed, they are deprived of their opportunity to get the admission for B.Ed. course. The advertisement was issued on 19-4-2004 and it was stayed immediately on 22nd December, 2004. Merely because these petitioners are eligible for admission, no vested right is created in them when the petitioner institution is not entitled to admit the students at the midst of the academic year. So their petition is without merit.

16. In view of the above facts, petitioners are not entitled to relief claimed by them but the petitions are liable to be dismissed being without any merit. However, we are of the opinion that some directions need to be given to the respondents to follow the norms prescribed under the Maharashtra Universities Act as well as the norms prescribed by the N.C.T.E. while granting permission or issue No Objection Certificates. In the present matter though permission was granted to the petitioner institution by N.C.T.E. in the month of November, 2004, the authorities of the State Government as well as the University overlooked the provisions in the Act and in the month of December, 2004 admission process was initiated though they were expected to treat the said permission as effective for

subsequent academic year, as such permission granted shall be treated for the academic year 2005-2006,

In order to streamline the procedure for grant of permission to open new college or institution of higher learning keeping in mind the provisions of the Maharashtra Universities Act we have framed guidelines appearing hereinafter.

We direct the respondents to follow statutory provisions as well as regulations; in the matter of grant of permission/affiliation, and to consider and process application for opening a new college or institution of higher learning; strictly; in conformity with the perspective plan prepared u/s 82(1) of the Act; and in accordance with the guidelines framed hereinbelow :

1. The Managements seeking Before the last day of October (one and permission to open new college or half years) prior to the commencement institution of higher learning shall of the college as per Section 82(3) of apply in the prescribed form to the the Act. Registrar of the University. 2. All such applications referred to On or before the last day of December above received within the aforesaid of the year of the application as per prescribed time limit after following section 82(4) of the Act. provisions of Section 82(4) of the Act shall be forwarded by the University to the State Government with the approval of Management Council. 3. Following Section 82(5) of the On or before last day of April Act the permission from the State preceding the year from which the Government to be communicated to permission is sought, (As per Supreme the University. Court order in re : St. Johns Teachers Institute (supra) but in any event on or before 15th July, preceding the year from which the permission is sought since proviso to Section 82(5) provides for time limit within which a decision should be taken by the State Government on the application moved by the institution for grant of NOC. 4. University to inform the new On or before last day of May but in any colleges about Govt. decision. event on or before last day of August, as the case may be of preceding the year from which permission is sought. 5. The new college authorities/ On or before 31st December of the Managements to apply to NCTE. preceding year from which the permission is sought (As per NCTE regulation) Note : In the meanwhile the University to carry out first time affiliation procedure as per Section 83 of the Act which will always be subject to NCTE permission as mentioned below :

6. NCTE is expected to inform the By 30th May of the year in which the new colleges about the permission. college is to open. Any permission received thereafter shall be effective from the subsequent academic year. Note : No application shall be entertained directly by the State Government for the grant of permission for opening new college or institution of higher learning.

17. In the result, Writ Petition Nos. 7676 and 7677 of 2004 are dismissed being without merit. Rule is discharged with no order as to costs.