

(2018) 06 CHH CK 0074

In the Chhattisgarh High Court

Case No : Writ Petition (C) No. 1419 Of 2018

Margdarshan Sansthan Sikhsha Mahavidyalaya

APPELLANT

Vs

Sarguja University And Ors

RESPONDENT

Date of Decision : 19-06-2018

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 14, 14(1), 14(6), 14(6)(a), 17, 18

Citation : (2018) 06 CHH CK 0074

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Kshitij Sharma, Neeraj Choubey, Bhaskar Payashi

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J

1. The petitioner is an educational institution running B.Ed. course. It was granted recognition way back on 11-7-2009 under Section 14(1) of the National Council for Teacher Education Act, 1993 (for short, 'the NCTE Act') for running B.Ed. course with an annual intake of 100 students which was revised by order dated 31-5-2015 for another two years for running B.Ed. programme from the academic session 2015- 16 subject to fulfillment of the conditions mentioned therein before 31- 10-2015. That order of recognition granted under the provisions of the NCTE Act was withdrawn by the National Council for Teacher Education (for short, 'the NCTE') by order dated 4-12-2017 on the complaint made by respondent No.1, in exercise of power conferred under Section 17 of the NCTE Act. The petitioner preferred appeal before the appellate committee constituted under the NCTE Act. The appellate committee by order dated 6-3-2018, set aside the order passed by the Western Regional Committee (WRC) of the NCTE and however, expected the WRC to take decision independently on its own finding subject to inspection, if any.

2. This writ petition has been filed by the petitioner solely on the ground that the WRC has not taken any action against the petitioner and the order of withdrawal has been set aside by the appellate committee and, therefore, the University has no option except to grant affiliation in exercise of power conferred under Section 14(6)(a) of the NCTE Act.

3. Respondent No.1 University has filed return opposing the writ petition stating inter alia that though the order has been set aside but the appellate committee has expected the WRC to take action against the petitioner, therefore, unless that is decided finally, no affiliation can be granted to the petitioner University.

4. No return has been filed by respondents No.2 and 3.

5. Mr. Kshitij Sharma, learned counsel appearing for the petitioner, would submit that once withdrawal order is set aside by the appellate committee under the NCTE Act, the respondent University is open to grant affiliation to the petitioner by virtue of the provisions contained in Section 14(6)(a) of the NCTE Act and any pending enquiry, if any, on the complaint of the University would not come in the way which the University is statutorily obliged to grant affiliation to the petitioner institution. Therefore, inaction on the part of the University is arbitrary and the University be directed to consider and grant affiliation to the petitioner. He would rely upon a decision of this Court in the matter of Sandipani Academy v. Durg University and another ILR 2018 CG (SN) 170.

6. Mr. Neeraj Choubey, learned counsel appearing for the University, would oppose and submit that unless the appellate order is fully complied with, the petitioner is not entitled for affiliation and the matter is pending before the WRC.

7. Mr. Bhaskar Payashi, learned counsel appearing for respondents No.2 and 3, brought to the notice of this Court the settled legal position in this regard.

8. It is not in dispute that the petitioner was duly recognised for running B.Ed. course in exercise of power conferred under the NCTE Act by order dated 31-5-2015 for a period of two years, but on the complaint made on 21-9-2017, it has been withdrawn by the WRC on 4-12-2017 which has been set aside in appellate power by the competent appellate authority on 16-3-2018, but the appellate committee has expected the WRC to take decision independently on the said complaint subject to inspection, if any and if required.

9. The NCTE Act was enacted with a view to achieve the 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 system and for matters connected therewith. Section 14 of the NCTE Act deals with recognition of institutions offering course or training in teacher education. Section 14(1) deals with submission of application to the Regional Committee of the NCTE recognition. Section 14(3)(a) deals with grant of recognition, which reads as under:-

"14. Recognition of institutions offering course or training in teacher education:-

(1) xxx xxx xxx xxx

(2) On receipt of an application by the Regional Committee from any institution under sub-section (1), and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall,-

(a) If it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by regulations, pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations."

10. Sub-section (6) of Section 14(4) of the NCTE Act provides that once the order of recognition is communicated under Section 14(4), the University is bound to grant affiliation to the College. Section 14(6) of the NCTE Act, dealing with grant of affiliation by the University, reads as follows:

"(6) Every examining body shall, on receipt of the order under sub-section (4),-

(a) grant affiliation to the institution, where recognition has been granted: or

(b) cancel the affiliation of the institution, where recognition has been refused."

11. Section 17 of the NCTE Act deals with cancellation of recognition granted under Section 14(3). Section 18 provides for appeals against the orders passed under Section 14 or Section 17.

12. Thus, from the above scheme of the NCTE Act, it is manifestly clear that once the Western Regional Committee of NCTE granted recognition to the petitioner-institute, the respondent-University is bound to grant affiliation and cannot refuse affiliation on the pretext that the petitioner-institution do not have sufficient number of teachers as required under Statute 28.

13. In the matter of State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and others (2006) 9 SCC 1 the Supreme Court has held that once recognition is granted by the NCTE under Section 14(6) of the NCTE Act, every University ("examining body") is obliged to grant affiliation to such institution and Acts, Ordinances and Regulations of the University do not apply to such cases. It was observed as under:-

"80. In our opinion, the observation 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 under Section 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."

15. In the matter of Maa Vaishno Devi Mahila Mahavidyalaya v. State of Uttar Pradesh and others (2013) 2 SCC 617 the Supreme Court while considering the supremacy of recognition granted by the NCTE has held and emphasized that affiliating body / examining body does not have any discretion to refuse affiliation with reference to any of the factors which have been considered by the NCTE while granting recognition. It was observed as under:-

"70. Under Section 14 and particularly in terms of Section 14(3) (a) of the Act, the NCTE is required to grant or refuse recognition to an institute. It has been empowered to impose such conditions as it may consider fit and proper keeping in view the legislative intent and object in mind. In terms of Section 14(6) of the Act, the examining body shall grant affiliation to the institute where recognition has been granted. In other words, granting recognition is the basic requirement for grant of affiliation. It cannot be said that affiliation is insignificant or a mere formality on the part of the examining body. It is the requirement of law that affiliation should be granted by the affiliating body in accordance with the prescribed procedure and upon proper application of mind. Recognition and affiliation are expressions of distinct meaning and consequences. In the matter of Chairman, Bhartia Education Society Vs. State of H.P. (2011) 4 SCC 527 this Court held that: (SCC p. 534 para 19) "19. The purpose of recognition and affiliation is different. In the context of the Act, affiliation enables and permits an institution to send its students to participate in public examinations conducted by the examining body and secure the qualification in the nature of degrees, diploma and certificates. On the other hand, recognition is the licence to the institution to offer a course or training in teaching education."

The Court also emphasised that the affiliating body / examining body does not have any discretion to refuse affiliation with reference to any of the factors which have been considered by NCTE while granting recognition."

16. In view of the aforesaid settled principle of law, it is quite explicit that once recognition has been granted to the institution, the University has no right and authority to refuse affiliation on any ground whatsoever and if the University feels that it could not have been granted, it can bring the same to the knowledge of the NCTE by forwarding the report and may request for withdrawal of recognition or in the alternative, may challenge the recognition so granted by filing appeal under Section 18 of the NCTE Act.

17. In Sandipani Academy (supra), this Court has held as under: -

"13. Apart from this, notice issued by respondent No.1 has been replied by the petitioner-Institution and clearly stated that the petitioner shall be making good the shortcomings pointed out by the University expeditiously. Thus, unless the recognition granted is stayed or set aside by a competent authority, the University is bound to act in accordance with sub-section (6) (a) of Section 14 of the Act of 1993, which is mandatory in nature and grant of affiliation to the petitioner Institution cannot be declined. If there are other requirements to be

satisfied by the petitioner like recruiting regular teachers, then the University may ask the petitioner to comply with such requirements within a time frame. However, the requirements should be in conformity with the provisions of Section 14(6) (a) of the Act of 1993 and Regulation 8 of the Regulations, 2007."

18. Reverting to the facts of the present case, it is not in dispute that the petitioner's recognition for running B.Ed. course which has been withdrawn earlier has been restored by appellate order dated 16-3- 2018 under Section 18 of the NCTE Act. Though the appellate committee has required the WRC to take decision independently on inspection, but the fact remains that recognition which has duly been granted in favour of the petitioner has been restored by the order of the appellate authority, therefore, respondent No.1 is obliged to comply with the mandatory provisions contained in Section 14(6) of the NCTE Act and grant affiliation to the petitioner institution within a period of two weeks from today unless the recognition granted by the NCTE is stayed or set aside by the competent authority.

19.The writ petition is allowed to the extent outlined herein-above. No order as to cost(s).